



# ADMINISTRATIVE REGISTER OF KENTUCKY

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

## MEETING NOTICES

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet on October 11, 2022, at 1:00 p.m. in room 149 Capitol Annex.

ARRS Tentative Agenda - 713 [Online agenda updated as needed](#)

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Title		Chapter	Regulation
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Cabinet, Department, Board, or Agency		Office, Division, Board, or Major Function	Specific Regulation

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The following agenda may not take into consideration all of the administrative regulations that may be removed to complete the public comment process or deferred or withdrawn by promulgating agencies.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, October 11, 2022 at 1 p.m.**  
**Annex Room 149**



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

**EDUCATION AND LABOR CABINET**

**Education Professional Standards Board**  
**Alternative Routes to Certification**

- 016 KAR 009:100. Alternative route to certification institute.
- 016 KAR 009:110. Expedited route to certification. (Filed with Emergency)

**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) (Deferred from July)
- 031 KAR 003:031. Voting precinct and address of overseas voter whose last place of residence is in the Commonwealth is no longer a recognized residential address. (Filed with Emergency) (Deferred from August)

**Forms and Procedures**

- 031 KAR 004:071E. Recanvas procedures. ("E" Expires 01-23-2023) (Filed with Ordinary) (Deferred from July)
- 031 KAR 004:071. Recanvas procedures. (Filed with Emergency) (Deferred from August)
- 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) (Deferred from July)
- 031 KAR 004:131. Delivery and return of absentee ballots transmitted to covered voters via facsimile or electronically. (Filed with Emergency) (Deferred from August)
- 031 KAR 004:141E. Submission of the federal postcard application via electronic mail. ("E" Expires 01-23-2023) (Filed with Ordinary) (Deferred from July)
- 031 KAR 004:141. Submission of the federal postcard application via electronic mail. (Filed with Emergency) (Deferred from August)
- 031 KAR 004:170. Exceptions to prohibition on electioneering. (Deferred from August)
- 031 KAR 004:196E. Consolidation of precincts and precinct election officers. ("E" Expires 01-23-2023) (Filed with Ordinary) (Deferred from July)
- 031 KAR 004:196. Consolidation of precincts and precinct election officers. (Filed with Emergency) (Deferred from August)
- 031 KAR 004:201E. Chain of custody for records during an election contest. ("E" Expires 01-23-2023) (Filed with Ordinary) (Deferred from July)
- 031 KAR 004:201. Chain of custody for records during an election contest. (Filed with Emergency) (Deferred from August)
- 031 KAR 004:210E. Establishment of risk-limiting audit pilot program. ("E" Expires 01-23-2023) (Filed with Ordinary) (Deferred from July)
- 031 KAR 004:210. Establishment of risk-limiting audit pilot program. (Filed with Emergency) (Deferred from August)

**Voting**

- 031 KAR 005:011E. Use of the federal writ-in absentee ballot. ("E" Expires 01-23-2023) (Filed with Ordinary) (Deferred from July)
- 031 KAR 005:011. Use of the federal writ-in absentee ballot. (Filed with Emergency) (Deferred from August)
- 031 KAR 005:026E. Ballot standards and election security. ("E" Expires 01-23-2023) (Filed with Ordinary) (Deferred from July)
- 031 KAR 005:026. Ballot standards and election security. (Filed with Emergency) (Deferred from August)

**FINANCE AND ADMINISTRATION CABINET**

**Kentucky Retirement Systems**

**General Rules**

- 105 KAR 001:415E. Reimbursement of hospital and medical insurance premiums for Medicare eligible retired members reemployed with a participating employer. (Filed with Ordinary) ("E" expires 03-25-2023) (Emergency Amended After Comments)

**GENERAL GOVERNMENT CABINET**

**Department of Military Affairs**

**Disaster and Emergency Services**

- 106 KAR 001:141. Emergency management funding. (Deferred from September)
- 106 KAR 001:171. Local emergency management agency program quarterly report. (Deferred from September)
- 106 KAR 001:181. Project application. (Deferred from September)
- 106 KAR 001:191. Project application reimbursement. (Deferred from September)
- 106 KAR 001:201. Local plan. (Deferred from September)
- 106 KAR 001:211. Local emergency management training. (Not Amended After Comments)
- 106 KAR 001:221. Local exercise. (Deferred from September)
- 106 KAR 001:231. Local emergency management agency ordinance requirement. (Deferred from September)
- 106 KAR 001:241. Local emergency management director appointment process. (Deferred from September)
- 106 KAR 001:251. Workers' Compensation Enrollment Form. (Deferred from September)
- 106 KAR 001:261. Supplementary state fund expense reimbursement eligibility list. (Deferred from September)

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106 KAR 001:291. Specialized rescue squad alternative affiliation agreement process. (Deferred from September)  
106 KAR 001:341. Rescue aid fund allocation. (Deferred from September)  
106 KAR 001:371. Rescue aid fund expenditure documentation. (Deferred from September)

### **Military Assistance Trust Funds**

106 KAR 002:021. Military Family Assistance Trust Fund. (Deferred from September)  
106 KAR 002:031. National Guard Adoption Benefits Program. (Deferred from September)

### **Kentucky Infrastructure Authority**

200 KAR 017:111E. Guidelines for Kentucky Infrastructure Authority drinking water and wastewater grant program. (Filed with Ordinary)  
("E" expires 03-18-2023) (Deferred from September)  
200 KAR 017:111. Guidelines for Kentucky Infrastructure Authority drinking water and wastewater grant program. (Filed with Emergency)

## **BOARDS AND COMMISSIONS**

### **Board of Pharmacy**

201 KAR 002:380E. Board authorized protocols. ("E" expires 05-05-2023) (Filed with Ordinary)

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

201 KAR 006:060. Fees. (Deferred from August)

### **Board of Medical Licensure**

201 KAR 009:305. Continued licensure of athletic trainers.

### **Board of Cosmetology**

201 KAR 012:030. Licensing and examinations. (Filed with Emergency)  
201 KAR 012:060. Inspections. (Filed with Emergency)  
201 KAR 012:082. Education requirements and school administration. (Filed with Emergency)  
201 KAR 012:190E. Complaint and disciplinary process. (Filed with Ordinary) ("E" expires 04-08-2023) (Not Amended After Comments)  
201 KAR 012:190. Complaint and disciplinary process. (Filed with Emergency)  
201 KAR 012:230. Code of ethics. (Filed with Emergency)  
201 KAR 012:260. Fees. (Filed with Emergency)  
201 KAR 012:290. Permits. (Filed with Emergency)

### **Board of Nursing**

201 KAR 020:260. Organization and administration standards for prelicensure registered nurse or practical nurse programs of nursing.  
201 KAR 020:310. Faculty for prelicensure registered nurse and practical nurse programs.  
201 KAR 020:490. Licensed practical nurse infusion therapy scope of practice.  
201 KAR 020:620. Licensing requirements for licensed certified professional midwives.  
201 KAR 020:650. Licensed certified professional midwives permitted medical tests and formulary.

## **KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM**

### **Board of Emergency Medical Services**

202 KAR 007:701. Scope of practice matters. (Filed with Emergency)

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

### **Heritage Council**

300 KAR 006:011. Historic rehabilitation tax credit certifications. (Filed with Emergency) (Amended After Comments)

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

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301 KAR 001:410. Taking of fish by nontraditional fishing methods.

#### **Game**

301 KAR 002:142. Spring turkey hunting. (Not Amended After Comments)

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302 KAR 027:011. Repeal of 302 KAR 027:010, 302 KAR 027:020, 302 KAR 027:040, 302 KAR 027:050, and 302 KAR 027:060.

#### **Ornamental Turf Lawn and Interior Plantscape Pest Control**

302 KAR 028:011. Repeal of 302 KAR 028:010, 302 KAR 028:020, 302 KAR 028:030, 302 KAR 028:040, 302 KAR 028:050, and 302 KAR 028:060.

#### **Structural Pest Control**

302 KAR 029:011. Repeal of 302 KAR 029:010, 302 KAR 029:020, 302 KAR 029:040, 302 KAR 029:050, 302 KAR 029:060 and 302 KAR 029:070.

## **JUSTICE AND PUBLIC SAFETY CABINET**

### **Department of State Police**

#### **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)

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

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

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

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

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

### **Kentucky Law Enforcement Council**

503 KAR 001:140. Peace officer, telecommunicator, and court security officer professional standards. (Filed with Emergency)

### **TRANSPORTATION CABINET**

#### **Department of Highways**

##### **Traffic**

603 KAR 005:350. Off-highway vehicles, safety, and routes.

### **EDUCATION AND LABOR CABINET**

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

##### **Labor Standards; Wages and Hours**

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 025:089. Workers' Compensation medical fee schedule for physicians. (Filed with Emergency)

### **PUBLIC PROTECTION CABINET**

#### **Department of Insurance**

##### **Insurance Holding Company Systems**

806 KAR 037:010. Insurance holding company systems. (Deferred from September)

#### **Department of Charitable Gaming**

##### **Charitable Gaming**

820 KAR 001:001. Definitions. (Not Amended After Comments)

820 KAR 001:032. Pulltabs. (Not Amended After Comments)

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

#### **Office of Human Resource Management**

##### **Administration**

900 KAR 001:050. Child and adult protection employees subject to state and national criminal background checks. (Deferred from August)

#### **Office of Inspector General**

##### **Telehealth**

900 KAR 012:005E. Telehealth terminology and requirements. ("E" expires 05-05-2023) (Filed with Ordinary)

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

##### **Vital Statistics**

901 KAR 005:120E. Abortion reporting. (Filed with Ordinary) ("E" expires 03-27-2023) (Emergency Amended After Comments)

901 KAR 005:120. Abortion reporting. (Filed with Emergency)

901 KAR 005:130. Certificate of abortion.

901 KAR 005:140. Permit to transport fetal remains.

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

##### **Communicable Diseases**

902 KAR 002:020. Reportable disease surveillance. (Filed with Emergency) (Comments Received; SOC ext., due 09-15-2022)

#### **Office of Inspector General**

##### **Health Services and Facilities**

902 KAR 020:365. Kentucky abortion-inducing drug certification program and registration of qualified physicians.

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

##### **Programs for the Underserved**

902 KAR 021:040. Community health worker certification.

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

##### **Medicaid Services**

907 KAR 001:065. Payments for price-based nursing facility services. (Filed with Emergency)

907 KAR 001:082. Coverage provisions and requirements regarding rural health clinic services. (Amended After Comments)

907 KAR 001:104. Reimbursement for advanced practice registered nurse services. (Not Amended After Comments)



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### **Kentucky Children's Health Insurance Program**

907 KAR 004:020E. Kentucky Children's Health Insurance Program Medicaid Expansion Title XXI of the Social Security Act. ("E" expires 04-15-2023) (Filed with Ordinary)

907 KAR 004:030E. Kentucky Children's Health Insurance Program Phase III Title XXI of the Social Security Act. ("E" expires 04-15-2023) (Filed with Ordinary)

### **Medicaid Eligibility**

907 KAR 020:020E. Income standards for Medicaid other than Modified Adjusted Gross Income (MAGI) standards or for former foster care individuals. ("E" expires 04-15-2023) (Filed with Ordinary)

907 KAR 020:100E. Modified Adjusted Gross Income (MAGI) Medicaid eligibility standards. ("E" expires 04-15-2023) (Filed with Ordinary)

### **Department for Aging and Independent Living**

#### **Aging Services**

910 KAR 001:090. Personal care attendant program and assistance services.

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

#### **Child Support**

921 KAR 001:400. Establishment, review, and modification of child support and medical support orders.

### **Child Welfare**

922 KAR 001:290. Background checks for private child-caring or child-placing staff members. (Amended After Comments)

922 KAR 001:350. Requirements for public child welfare agency foster parents, adoptive parents, and respite care providers.

### **Daycare**

922 KAR 002:160E. Child Care Assistance Program. (Filed with Ordinary) ("E" expires 03-28-2023) (Deferred from September)

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

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

### **FINANCE AND ADMINISTRATION CABINET**

#### **Kentucky Retirement Systems**

##### **General Rules**

105 KAR 001:415. Reimbursement of hospital and medical insurance premiums for Medicare eligible retired members reemployed with a participating employer. (Filed with Emergency) (Comments Received, SOC due 10-14-2022)

105 KAR 001:450. Quasi-governmental employer reports on independent contractors and leased employees. (Filed with Emergency) (Withdrawn-SOC not filed by deadline, 08-15-2022)

### **BOARDS AND COMMISSIONS**

#### **Board of Dentistry**

201 KAR 008:520. Fees and fines. (Deferred from July)

#### **Real Estate Commission**

201 KAR 011:121. Standards of professional conduct. (Amended After Comments) (Deferred from September)

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

#### **Department of Tourism**

300 KAR 001:020E. Process for the distribution of tourism recovery and investment funds appropriated by the General Assembly in the 2022 Regular Session from the State Fiscal Recovery fund of the American Rescue Plan Act of 2021. ("E" expires 04/21/2023) (Filed with Ordinary) (Withdrawn by Agency, 08-25-2022)

### **EDUCATION AND LABOR CABINET**

#### **Department of Education**

##### **Office of Instruction**

704 KAR 003:305. Minimum requirements for high school graduation. (Comments Received; SOC ext., due 10-14-2022)

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

#### **Office of Health Data and Analytics**

##### **Kentucky Health Benefit Exchange**

900 KAR 010:120. KHBE eligibility and enrollment in qualified health plan, SHOP, and SHOP formal resolution process. (Comments Received; SOC ext., due 10-14-2022)

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

##### **Medicaid Services**

907 KAR 001:008. Ambulatory surgical center services and reimbursement. (Comments Received; SOC ext., due 10-14-2022)

907 KAR 001:044. Coverage provisions and requirements regarding community mental health center behavioral health services. (Comments Received; SOC ext., due 10-14-2022)

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

##### **Child Welfare**

922 KAR 001:300. Standards for child-caring facilities. (Comments Received; SOC ext., due 10-14-2022)

*\*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**  
**31 KAR 2:030E**

This emergency regulation is being promulgated pursuant to both KRS 13A.190(1)(a)(1), to meet an imminent threat to public welfare, as well as, KRS 13A.190(1)(a)(3), to meet an imminent deadline for the promulgation of an administrative regulation established by state statute. Section 150 of the Kentucky Constitution requires free and fair elections in the Commonwealth; KRS 118.025(4) sets November 8, 2022 as the date for the next regular election, while KRS 118.025(3) sets May 16, 2023 as the date for the next primary nomination of candidates; KRS 117.379(2)(c), enacted through 2022 Ky. Act ch. 172, sec. 3, requires that any e-poll book product used in the Commonwealth be approved and certified through an examination and approval of the State Board of Elections beginning September 1, 2022. This is being filed as an emergency administrative regulation to ensure the administrative regulations and procedures required by statute to promote free and fair elections are in effect for upcoming elections. This emergency administrative regulation is temporary in nature will be replaced by an ordinary administrative regulation. The companion ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor  
KAREN SELLERS, Board Director

**STATE BOARD OF ELECTIONS**  
**(New Emergency Administrative Regulation)**

**31 KAR 2:030E. E-poll book product certification.**

EFFECTIVE: September 1, 2022

RELATES TO: KRS 117.001(8), 117.379(2)(c)

STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.379(2)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 117.379(2)(c) requires the State Board of Elections to promulgate administrative regulations that establish certification requirements for the approval and certification of e-poll book products used in the Commonwealth. This administrative regulation provides for those measures.

Section 1. Beginning September 1, 2022, all e-poll book products, as defined by KRS 117.001(8), sought to be used in the Commonwealth shall be approved and certified if the examiners' report outlined in KRS 117.379(2)(c), and the State Board of Elections find that the e-poll book product meets the certification requirements outlined in Form SBE 2030, "Certification Procedures For E-Poll Book Products," 09/2022.

Section 2. Incorporated by Reference. (1) "Certification Procedures For E-Poll Book Products," Form SBE 2030, 09/2022.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

KAREN SELLERS, Executive Director

APPROVED BY AGENCY: September 1, 2022

FILED WITH LRC: September 1, 2022 at 9:45 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this new administrative regulation shall be held on October 28, 2022, at 10:00 a.m. ET, at the Office of the State Board of Elections. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to

attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 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: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Taylor Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes certification requirements for the approval and certification of e-poll book products used in the Commonwealth.

(b) The necessity of this administrative regulation: This administrative regulation is necessary given the mandate of KRS 117.379(2)(c).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the mandate of KRS 117.379(2)(c).

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect e-poll book vendors and the State Board of Elections.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. To comply with this administrative regulation, e-poll book vendors will need to follow the certification requirements outlined, while the State Board of Elections will need to make sure the requirements are followed by the vendors.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The State Board of Elections estimates that the implementation of this administrative regulation will have minimal costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new administrative regulation will benefit all in ensuring that all e-poll book products used in the Commonwealth are reviewed and certified.

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

(a) Initially: The cost of the implementation of this administrative regulation for the State Board of Elections will be minimal as it will require only the creation of the new Forms incorporated by reference.

(b) On a continuing basis: The only continuing cost will be the price associated with printing any copies of the SBE Forms that are necessary.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds from the State Board of Elections' administrative budget will be used in the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Implementation of this administrative regulation can be achieved without an increase in fees or funding by the General Assembly.

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

(9) TIERING: Is tiering applied? Tiering is not used in this administrative regulation, as a desired result of the promulgation of this administrative regulation is uniform procedures for the approval and certification of e-poll books used in the Commonwealth.

#### 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 State Board of Elections 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 117.379(2)(c) requires and authorizes the actions taken by this administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

(d) How much will it cost to administer this program for subsequent years? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

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

Revenues (+/-): It is not expected or intended that this administrative regulation will generate any revenue.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

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? The State Board of Elections expects that this administrative regulation will

not generate any specific cost savings for the regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(c) How much will it cost the regulated entities for the first year? The State Board of Elections estimates that the implementation of this administrative regulation will result in e-poll book vendors incurring nominal costs in-line with the cost of certification of their products in other jurisdictions.

(d) How much will it cost the regulated entities for subsequent years? The State Board of Elections estimates that the implementation of this administrative regulation will result in e-poll book vendors incurring nominal costs in-line with the cost of certification of their products in other jurisdictions.

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

Cost Savings (+/-): It is not expected that this administrative regulation will result in any cost savings.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

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)]. The State Board of Elections does not expect that this administrative regulation will result in a major economic impact as it is not expected to have an overall negative or adverse economic impact of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate.

#### STATEMENT OF EMERGENCY 101 KAR 2:210E

This emergency administrative regulation incorporates by reference the 2023 plan year handbook for the self-insured plan offered through the Public Employee Health Insurance Program, commonly known as the Kentucky Employees' Health Plan. KRS 18A.2254(1) requires the Personnel Cabinet to promulgate an administrative regulation that incorporates the plan year handbook by reference and to file the administrative regulation by September 15 of each year. This emergency administrative regulation is necessary to meet the filing deadline established by state law at KRS 18A.2254(1)(a)3.

KRS 18A.2254(1)(a) requires the secretary of the Personnel Cabinet to annually promulgate an administrative regulation to incorporate by reference the plan year handbook. The handbook must contain, at a minimum, the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan provided to public employees covered under the self-insured plan. The 2023 plan year handbook, or Benefits Selection Guide, contains the required and necessary information for public employees to make health insurance coverage decisions during open enrollment in October 2022. This administrative regulation incorporates by reference the 2023 Benefits Selection Guide that will be distributed by the Personnel Cabinet's Department of Employee Insurance to public employees covered under the self-insured plan. An ordinary administrative regulation is not sufficient due to the statutory filing deadlines and handbook distribution requirements.

This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is not identical to this emergency administrative regulation. This emergency administrative regulation will be in effect for part of the current 2022 plan year. The existing language in the Benefits Selection Guide for the 2022 plan year should

remain until such time as the ordinary administrative regulation incorporating the Benefits Selection Guide for plan year 2023 replaces this emergency administrative regulation.

ANDY BESHEAR, Governor  
GERINA D. WHETHERS, Secretary

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

**101 KAR 2:210E. 2022 and 2023 Plan Year  
Handbooks[Handbook] for the Public Employee Health  
Insurance Program.**

EFFECTIVE: September 15, 2022

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

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.2254(1)(a)1 requires the secretary of the Personnel Cabinet to promulgate an administrative regulation to incorporate by reference the plan year handbook distributed by the Department of Employee Insurance to public employees covered under the self-insured plan and establishes the minimum requirements for the information included in the handbook. This administrative regulation incorporates by reference the plan year Benefits Selection Guide, which is the handbook distributed by the department to public employees for the 2022 and 2023 Plan Years[Year] as required by KRS 18A.2254(1)(a)1.

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

Section 2. (1) The Department of Employee Insurance shall distribute or make available to the public employees covered under the self-insured plan the 2023 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide, which shall include the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to the public employees covered under the self-insured plan.

(2) The 2023 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide shall govern the health plan benefits for public employees covered under the self-insured plan beginning January 1, 2023.

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

(a) "2022 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide", 2022 edition; and

(b) "2023 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide", 2023 edition[is incorporated by reference].

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

GERINA D. WHETHERS, Secretary

APPROVED BY AGENCY: September 8, 2022

FILED WITH LRC: September 15, 2022 at 9:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 25, 2022, at 10:00 a.m. at 501 High Street, 3rd Floor, Frankfort,

Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on October 31, 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: Chris Chamness, Staff Attorney, Office of Legal Services, Personnel Cabinet, 501 High Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-6815, fax (502) 564-7603, email [Chris.Chamness@ky.gov](mailto:Chris.Chamness@ky.gov).

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Chris Chamness

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the 2023 plan year handbook containing information about the self-insured health insurance plans offered through the Public Employee Health Insurance Program. The handbook, commonly referred to as the Benefits Selection Guide, is distributed to plan holders participating in the self-insured program. The Benefits Selection Guide contains the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan available to public employees through the self-insured program in 2023.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the statutory mandate of KRS 18A.2254. More specifically, KRS 18A.2254(1)(a) requires the Personnel Cabinet to promulgate an administrative regulation that incorporates by reference the 2023 plan year handbook that will be distributed to the public employees covered by the Public Employee Health Insurance Program. The handbook must be filed with the Legislative Research Commission on or before September 15 each year.

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation aids in the effectuation of the statute, KRS 18A.2254, by incorporating by reference the 2023 plan year handbook for the Public Employee Health Insurance Program in an administrative regulation. Further, this administrative regulation is the method by which the Personnel Cabinet will comply with KRS 18A.2254.

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

(a) How the amendment will change this existing administrative regulation: This is an amendment. The existing administrative regulation incorporates by reference the 2022 plan year handbook, which constitutes a compilation of the premium rates and contributions, benefit options, eligibility rules, and enrollment information for participants of the Public Employee Health Insurance Program for plan year 2022. The amendment adds and incorporates by reference the 2023 plan year handbook, which contains the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan available to public employees for plan year 2023.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to give notice regarding the premiums, employee contributions, employer contributions, benefits, co-pays, coinsurance, and deductibles for each plan available to public employees under the Public Employee Health Insurance Program for plan year 2023. This amendment is also necessary to

comply with the statutory mandate in KRS 18A.2254 to annually update the regulation incorporating the plan year handbook.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 18A.2254, the statute authorizing the self-insured plan under the Public Employee Health Insurance Program. KRS 18A.2254 mandates that the plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year. This amendment incorporates the 2023 plan year handbook by reference in accordance with KRS 18A.2254.

(d) How the amendment will assist in the effective administration of the statutes: This amendment conforms to the requirements of KRS 18A.2254, the statute authorizing the self-insured plan under the Public Employee Health Insurance Program. KRS 18A.2254 mandates that the plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year. This amendment incorporates the 2023 plan year handbook by reference in accordance with KRS 18A.2254.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects employees of state and select county and local government entities, including employees of the local school boards and districts. This administrative regulation also affects certain retirees as specified by KRS 18A.225. More specifically, and as defined by KRS 18A.225(1)(a), this administrative regulation affects approximately 178,270 employees and retirees eligible to participate in the Public Employee Health Insurance Program. In total, this administrative regulation affects 291,622 members in the self-insured plan including employees and retirees, qualifying beneficiaries, and dependents.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Affected entities will not be required to take any additional action to comply with this administrative regulation that incorporates the 2023 plan year handbook. The 2023 Benefits Selection Guide will provide information to the public employees covered under the Public Employee Health Insurance Program about the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for the 2023 plan year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation provides employer and employee premium contribution information for health plans available under the Public Employee Health Insurance Program for plan year 2023. There is no direct cost impact to employers participating in the Public Employee Health Insurance Program as a result of incorporating the 2023 plan year handbook into the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): For plan year 2023, participating employers (entities) and participating employees and retirees and their beneficiaries and dependents covered under the Public Employee Health Insurance Program will have access to comprehensive health insurance benefits under all plans offered through the self-insured program. For plan year 2023, employee contributions to health coverage premiums remain unchanged across all plans, as compared to 2022 premiums. Employer premium contribution amounts increased 10% across all plans combined, as compared to 2022 premiums.

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

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

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

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

The source of funding to be used for the implementation of this administrative regulation will be the Public Employee Health Insurance Trust Fund.

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

(8) State whether or not this administrative regulation 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? No, tiering is not applied because this administrative regulation applies equally to all participants in the Public Employee Health Insurance Program.

## 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 will affect all employees of state and select county and local government entities, including employees of the local school boards and districts that participate in the Public Employee Health Insurance Program. As employers, this administrative regulation will affect state and select county and local government entities as well as local school boards and districts. This administrative regulation also affects retirees under the age of 65 who are eligible to participate in the Program by virtue of their participation in one of the state-administered retirement systems.

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

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? The 2023 plan year handbook will be online and distributed electronically rather than in printed hard copy. This method of distribution is expected to be a savings for the Public Employee Health Insurance Program during the 2022 open enrollment season and throughout the 2023 plan year. Should the distribution of the plan year handbook continue to be made available online and distributed only by electronic means in the future, the Public Employee Health Insurance Program could continue to recognize cost savings in subsequent years.

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

Revenues (+/-): \$0

Expenditures (+/-): \$0

Other Explanation: The regulation does not create any cost savings or expenditures beyond the resources to promulgate this regulation.

(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 regulation does not create any 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? None. This regulation will not generate any cost savings for regulated entities during subsequent years.

(c) How much will it cost the regulated entities for the first year? This regulation does not create any cost for regulated entities during the first year.

(d) How much will it cost the regulated entities for subsequent years? The regulation does not create any cost savings or expenditures 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 (+/-): \$0

Expenditures (+/-): \$0

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 will not have a major economic impact.

#### STATEMENT OF EMERGENCY 105 KAR 1:451E

Pursuant to KRS 13A.190(1)(a)3., this emergency administrative regulation is being promulgated in order to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute. KRS 61.5991(3) requires the Kentucky Public Pensions Authority (KPPA) to provide a report to the state budget director's office and the Legislative Research Commission within sixty (60) days of the end of the fiscal year beginning on July 1, 2021. In order to comply with the statutory deadline for this report, the KPPA must receive the information mandated by KRS 61.5991 from approximately 100 quasi-governmental employers well in advance of the statutory deadline for the report. This emergency administrative regulation will be replaced by an ordinary administrative regulation because the information reported by the quasi-governmental employers and the report provided by the KPPA to the state budget director's office and the Legislative Research Commission are recurring every subsequent fiscal year after the fiscal year beginning on July 1, 2021. The companion ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor

JOHN CHILTON, Chief Executive Officer

#### FINANCE AND ADMINISTRATION CABINET Kentucky Retirement Systems (New Emergency Administrative Regulation)

#### 105 KAR 1:451E. Quasi-governmental employer reports on independent contractors and leased employees.

EFFECTIVE: August 19, 2022

RELATES TO: KRS 61.5991, 61.510, 61.543, 61.552, 61.645, 61.675, 61.685

STATUTORY AUTHORITY: KRS 61.5991(1)(c), 61.645(9)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(e) requires the Board of Trustees of the Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS

61.510 to 61.705 and 16.505 to 16.652, and to conform to federal statutes and regulations. KRS 61.5991 requires certain employers that participate in the Kentucky Employees Retirement System to report information to the Kentucky Public Pensions Authority on some persons providing services for the participating employer as an independent contractor, a leased employee, or via any other similar employment arrangement.

#### Section 1. Definitions.

(1) Unless otherwise defined in this section, the definitions contained in KRS 61.510 and the definition of "non-core services independent contractor" in KRS 61.5991 shall apply to this administrative regulation.

(2) "Complete" means all required sections of a form are filled out, the form has been fully executed by an agency head, appointing authority, or authorized designee (such as the reporting official), and all supporting documentation required by the form is included with the form.

(3) "Core services independent contractor" means a person, either personally or through a company or other legal entity, who provides services for a quasi-governmental employer as an independent contractor, other than as a non-core services independent contractor.

(4) "Core services leased employee" means a person who provides services for a quasi-governmental employer as a leased employee through a staffing company, other than as a non-core services independent contractor.

(5) "Direct employment" means employees reported by the quasi-governmental employer in accordance with KRS 61.675 and 105 KAR 1:140.

(6) "File" means a form has been received at the retirement office by mail, fax, secure email, or in-person delivery or via Employer Self Service on the Web site maintained by the agency (if available).

(7) "KPPA" means the administrative staff of the Kentucky Public Pensions Authority.

(8) "Other employment arrangement" means any written agreement between a quasi-governmental employer and a third party (including, but not limited to, a person, company, or other legal entity) for one (1) or more persons to provide services for the quasi-governmental employer in exchange for the third party receiving monetary compensation, remuneration, or profit. "Other employment arrangement" does not include direct employment, any written agreement for one (1) or more persons to provide services for a quasi-governmental employer as a non-core services independent contractor, or any written agreement for one (1) or more persons to provide services to a quasi-governmental employer if the persons would not be in a regular full-time position as defined in KRS 61.510(21) if the persons were directly employed by the quasi-governmental employer.

(9) "Prior fiscal year" means the fiscal year beginning July 1 that is immediately prior to the fiscal year in which the KPPA provides the report to the state budget director's office and the Legislative Research Commission required by KRS 61.5991(3).

(10) "Quasi-governmental employer" means an employer participating in the Kentucky Employees Retirement System that is a local or district health department governed by KRS Chapter 212, state-supported university or community college, mental health/mental retardation board, domestic violence shelter, rape crisis center, child advocacy center, or any other employer that is eligible to voluntarily cease participation in the Kentucky Employees Retirement System as provided by KRS 61.522. For the purpose of this administrative regulation, "quasi-governmental employer" does not include county attorneys, the Council on State Governments (CSG), the Kentucky Educational Television (KET) Foundation, Association of Commonwealth's Attorneys, the Kentucky High School Athletic Association (KHSAA), the Municipal Power Association of Kentucky, the Kentucky Office of Bar Admissions, the Nursing Home Ombudsman, the Kentucky Association of Regional Programs (KARP), and the Kentucky Association of Sexual Assault Programs.

#### Section 2. Required Form for Annual Reporting.

(1)(a) For the fiscal year beginning July 1, 2021, quasi-governmental employers shall report all persons providing services as core services independent contractors, core services leased employees, or through any other employment arrangement by completing the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, and filing the Form 6756 at the retirement office on or before May 2, 2022.

(b) Effective with the fiscal year beginning July 1, 2022, and for each fiscal year thereafter, quasi-governmental employers shall report all persons providing services as core services independent contractors, core services leased employees, or through any other employment arrangement by completing the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, and filing the Form 6756 at the retirement office. For each fiscal year beginning on or after July 1, 2022, the Form 6756 shall be filed at the retirement office on or before April 15 of the fiscal year in which the Form 6756 is required.

(c) If a quasi-governmental employer contracts for any additional persons to provide services as core services independent contractors, core services leased employees, or through any other employment arrangement after the submission of a completed Form 6756, Annual Employer Certification of Non-Contributing Service Providers, in accordance with paragraph (a) or paragraph (b) of this subsection, but prior to the end of the fiscal year, the quasi-governmental employer shall file at the retirement office a completed supplemental Form 6756 reflecting only those persons not previously reported on the initial Form 6756. The supplemental Form 6756 shall be filed at the retirement office on or before June 30 of the fiscal year in which the Form 6756 is required.

(2)(a) Persons exempted under Sections 5 and 6 shall not be required to be listed on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers.

(b) Persons providing services as core services independent contractors, core services leased employees, or through any other employment arrangement who would not qualify as an employee in a regular full-time position pursuant to KRS 61.510(21) if directly employed by the quasi-governmental employer shall not be listed on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers.

(c) Persons providing services as core services independent contractors, core services leased employees, or through any other employment arrangement who would be in a position reported to another state-administered retirement system if directly employed by the quasi-governmental employer shall not be listed on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers.

(d)1. Quasi-governmental employers may choose to report persons providing services as a non-core services independent contractor on an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers.

2. All persons providing services to a quasi-governmental employer as a non-core services independent contractor who are included on an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, shall be treated in the same manner as all other persons listed on the Form 6756, including determinations by the KPPA under Section 3 of this administrative regulation.

(3)(a) For the fiscal year beginning July 1, 2021, quasi-governmental employers that do not file at the retirement office a completed Form 6756, Annual Employer Certification of Non-Contributing Service Providers, on or before May 2, 2022 shall be reported as noncompliant to the state budget director's office and the Legislative Research Commission in accordance with KRS 61.5991(2)(c) and 61.5991(3)(d).

(b) For each fiscal year beginning on or after July 1, 2022, quasi-governmental employers that do not file at the retirement office a completed Form 6756, Annual Employer Certification of Non-Contributing Service Providers, as required by Section 2(1)(b) of this administrative regulation shall be reported as noncompliant to the state budget director's office and the Legislative Research Commission in accordance with KRS 61.5991(2)(c) and 61.5991(3)(d).

(4) If a quasi-governmental employer files at the retirement office an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, without the documentation required by the Form 6756, the Form 6756 shall not be complete and the quasi-governmental employer shall be noncompliant in accordance with KRS 61.5991(2)(c) and 61.5991(3)(d) unless a completed Form 6756 is later filed at the retirement office by the appropriate deadline set forth in subsections (1), (2), and (5) of this Section.

(5)(a) After receiving an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, the KPPA may notify the quasi-governmental employer that additional information is required.

(b) If additional information is required by the KPPA, the KPPA shall notify the quasi-governmental employer in writing to the attention of the agency head, appointing authority, or authorized designee, such as the reporting official, and shall include the following in its notification:

1. A detailed description of the additional information required, and

2. A deadline by which the additional information required must be filed at the retirement office, which shall not be less than fourteen (14) calendar days, but may be longer than fourteen (14) calendar days.

(c) An initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, shall not be considered complete until all additional information requested by the KPPA is on file at the retirement office.

(d) If a quasi-governmental employer fails to provide the additional information to the KPPA by the deadline listed in the notification described in paragraph (b) of this subsection or by the deadline agreed upon by the KPPA and the quasi-governmental employer, then the quasi-governmental employer shall be reported as noncompliant to the state budget director's office and the Legislative Research Commission in accordance with KRS 61.5991(2)(c) and 61.5991(3)(d).

(6) During an audit of the quasi-governmental employer conducted in accordance with KRS 61.675, 61.685, and 61.5991(2)(a)2., if the KPPA discovers that a quasi-governmental employer has failed to list all persons on a Form 6756, Annual Employer Certification of Non-Contributing Service Providers, as required by this administrative regulation, then the quasi-governmental employer shall be reported as noncompliant to the state budget director's office and the Legislative Research Commission in accordance with KRS 61.5991(2)(c) and 61.5991(3)(d).

### Section 3. Determination of Employee or Independent Contractor.

(1) The KPPA shall have the authority to determine which persons listed on initial and supplemental Form 6756s, Annual Employer Certification of Non-Contributing Service Providers, should be reported as employees in regular full-time positions in accordance with KRS 61.510(5) and 61.510(21) and which persons listed on the initial and supplemental Form 6756s, Annual Employer Certification of Non-Contributing Service Providers, are independent contractors.

(2) The KPPA shall apply common law factors used by the Internal Revenue Service (IRS), in accordance with IRS Publication 1779, to determine whether a person listed on the initial and supplemental Form 6756s, Annual Employer Certification of Non-Contributing Service Providers, is an employee of the quasi-governmental employer pursuant to KRS 61.510(5) or an independent contractor of the quasi-governmental employer.

(3)(a) If the KPPA determines that a person listed on an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, is an employee of the quasi-governmental employer in a regular full-time position pursuant to KRS 61.510(5) and 61.510(21), then the quasi-governmental employer shall remit all reports, records, contributions, and reimbursements for that person as an employee in a regular full-time position in accordance with KRS 61.675 and 105 KAR 1:140 effective the calendar month after the KPPA has notified the quasi-



governmental employer of its determination in accordance with Section 4 of this administrative regulation.

(b)1. If the KPPA determines that a person listed on an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, is an employee of the quasi-governmental employer in a regular full-time position pursuant to KRS 61.510(5) and 61.510(21), then the quasi-governmental employer shall be required to complete and file at the retirement office a Form 4225, Verification of Past Employment, for that person for all periods during which the person was providing services to the quasi-governmental employer.

2. If the KPPA determines that a person listed on an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, is an employee of the quasi-governmental employer in a regular full-time position pursuant to KRS 61.510(5) and 61.510(21), then the quasi-governmental employer also shall be required to submit all relevant contracts and other documentation demonstrating the relationship between the quasi-governmental employer and the person for all periods during which the person was providing services to the quasi-governmental employer.

(c)1. After reviewing the information from the quasi-governmental employer required by paragraph (b) of this subsection, if the KPPA determines that the person was an employee in a regular full-time position pursuant to KRS 61.510(5) and 61.510(21) for previous periods that were not reported by the quasi-governmental employer in accordance with KRS 61.675, KRS 61.543, and 105 KAR 1:140, then the person shall be eligible to purchase omitted service in accordance with KRS 61.552(2) for the periods of their previous employment by the quasi-governmental employer in a regular full-time position.

2. After reviewing the information from the quasi-governmental employer required by paragraph (b) of this subsection, if the KPPA determines that the person was an employee in a regular full-time position pursuant to KRS 61.510(5) and 61.510(21) for previous periods that were not reported by the quasi-governmental employer in accordance with KRS 61.675, KRS 61.543, and 105 KAR 1:140, then the quasi-governmental employer shall be responsible for payment of delinquent omitted employer contributions in accordance with KRS 61.552(2) and 61.675(3)(b) for all periods of the person's previous employment by the quasi-governmental employer in a regular full-time position.

#### Section 4. Notification to Employers of Determination of Employment Relationship.

(1) Effective with the fiscal year beginning July 1, 2021, and for each fiscal year thereafter, quasi-governmental employers shall be notified by the KPPA of the determination of which persons should be reported as employees in regular full-time positions in accordance with KRS 61.510(5) and 61.510(21) no later than the submission of the report to the state budget director's office and the Legislative Research Commission required by KRS 61.5991(3).

(2)(a) The KPPA shall notify the quasi-governmental employer of the determination of which persons listed on an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, should be reported as employees in regular full-time positions in accordance with KRS 61.510(5) and 61.510(21) in one (1) notification letter.

(b) The notification shall be sent to agency head, appointing authority, or authorized designee, such as the reporting official.

(c) The notification shall include:

1. The name of each person who should be reported as an employee in regular full-time position in accordance with KRS 61.675 and 105 KAR 1:140,

2. A description of the contract or other documents pursuant to which each person who should be reported as an employee in a regular full-time position are providing or have provided services to the quasi-governmental employer, and

3. A statement that all other persons listed on the initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, should not be reported as employees in regular full-time positions.

#### Section 5. Contracts for Professional Services That Have Not Historically Been Provided by Employees.

(1) A quasi-governmental employer shall not be required to report a person on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if:

(a) The person is providing professional services as a core services independent contractor, core services leased employee, or through any other employment arrangement that have not been performed by direct employees of the quasi-governmental employer since January 1, 2000; and

(b) The professional services have been performed or are being performed for the quasi-governmental employer under a contract filed at the retirement office and determined by the KPPA or the Kentucky Retirement Systems to represent services provided by an independent contractor.

(2) Quasi-governmental employers may choose to report a person on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, even if the person is providing professional services under a contract that have not historically been provided by employees.

#### Section 6. Original Contracts Entered Prior to January 1, 2021.

(1) A quasi-governmental employer shall not be required to report a person on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if the person is providing services to the quasi-governmental employer as a core services independent contractor, core services leased employee, or through any other employment arrangement under an original contract with the person or a company entered into prior to January 1, 2021, unless one of the exceptions in subsections (2), (3), or (4) of this Section applies.

(2) A quasi-governmental employer shall be required to report a person on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if the person is providing services to the quasi-governmental employer as a core services independent contractor, core services leased employee, or through any other employment arrangement under an original contract with the person or a company entered into prior to January 1, 2021 if the term of the original contract has expired and the contract has been renewed or continued.

(3) A quasi-governmental employer shall be required to report a person on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if the person is providing services to the quasi-governmental employer as a core services independent contractor, core services leased employee, or through any other employment arrangement under an original contract with the person or a company entered into prior to January 1, 2021 if the contract has been modified to encompass different services.

(4) A quasi-governmental employer shall be required to report a person on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if the person is providing services to the quasi-governmental employer as a core services independent contractor, core services leased employee, or through any other employment arrangement under an original contract with a company entered into prior to January 1, 2021 if the person was not included in the original contract.

(5) Quasi-governmental employers may choose to report a person on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, even if the person is providing services to the quasi-governmental employer as a core services independent contractor, core services leased employee, or through any other employment arrangement under an original contract with the person or a company entered into prior to January 1, 2021.

#### Section 7. Report to the State Budget Director's Office and the Legislative Research Commission.

(1)(a) To determine the number of employees of the quasi-governmental employer reported for the prior fiscal year in accordance with KRS 61.5991(3)(a), the KPPA shall add together all employees in regular full-time positions reported by the quasi-governmental employer pursuant to KRS 61.675 and 105 KAR 1:140 in the prior fiscal year.

(b) Persons listed on an initial or supplemental Form 6756,

Annual Employer Certification of Non-Contributing Service Providers, for the prior fiscal year who are ultimately determined by the KPPA to be employees of the quasi-governmental employer in regular full-time positions shall not be included in the number of employees of the quasi-governmental employer for the prior fiscal year. Such persons may be included in the number of employees of the quasi-governmental employer for a subsequent fiscal year if the person is reported by the quasi-governmental employer in the subsequent fiscal year as an employee in a regular full-time position in accordance with KRS 61.675 and 105 KAR 1:140.

(2) To determine the number of persons providing services to the quasi-governmental employer who were not reported for the prior fiscal year in accordance with KRS 61.5991(3)(b), the KPPA shall use the total number of persons listed on initial and supplemental Form 6756s, Annual Employer Certification of Non-Contributing Service Providers, for the prior fiscal year.

(3) The KPPA shall report the following information for each quasi-governmental employer determined to have falsified data or been noncompliant in accordance with KRS 61.5991(3)(d):

- (a) The name of the quasi-governmental employer;
- (b) A description of the type of data falsified and the support the KPPA has for believing the data to be falsified, if applicable; and
- (c) A description of the nature of the noncompliance, if applicable.

Section 8. Incorporation by Reference. (1) The following materials are incorporated by reference:

- (a) Form 6756, "Annual Employer Certification of Non-Contributing Service Providers", September 2021.
- (b) Internal Revenue Service Publication 1779, "Independent Contractor or Employee", March 2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the Kentucky Public Pensions Authority's Web site at [kyret.ky.gov](http://kyret.ky.gov).

JOHN CHILTON, Chief Executive Officer

APPROVED BY AGENCY: August 19, 2022

FILED WITH LRC: August 19, 2022 at 11:25 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this emergency administrative regulation shall be held on Tuesday, October 25, 2022 at 2:00 p.m. at the Kentucky Public Pensions Authority, 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed emergency administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed emergency administrative regulation. Written comments shall be accepted until October 31, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed emergency administrative regulation to the contact person.

CONTACT PERSON: Jessica Beaubien, Policy Specialist, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8570, fax (502) 696-8801, email [Legal.Non-Advocacy@kyret.ky.gov](mailto:Legal.Non-Advocacy@kyret.ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jessica Beaubien, Policy Specialist

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the forms, procedures, and requirements for certain quasi-governmental employers in the

Kentucky Employees Retirement System that must provide information to the Kentucky Public Pensions Authority (KPPA) on some independent contractors, leased employees, and other persons providing services for the quasi-governmental employer under similar arrangements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the forms, procedures, and requirements for certain quasi-governmental employers in the Kentucky Employees Retirement System that must provide information to the KPPA on some independent contractors, leased employees, and other persons providing services for the quasi-governmental employer under similar arrangements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statute by establishing the forms, procedures, and requirements for certain quasi-governmental employers in the Kentucky Employees Retirement System that must provide information to the KPPA on some independent contractors, leased employees, and other persons providing services for the quasi-governmental employer under similar arrangements in accordance with KRS 61.5991 and 61.645(9)(e). In particular, KRS 61.5591(1)(c) authorizes the promulgation of an administrative regulation to implement KRS 61.5991.

(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 forms, procedures, and requirements for certain quasi-governmental employers in the Kentucky Employees Retirement System that must provide information to the KPPA on some independent contractors, leased employees, and other persons providing services for the quasi-governmental employer under similar arrangements.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: One (1) entity that provides day-to-day operations for the Kentucky Employees Retirement System: the KPPA. One (1) public pension system: the Kentucky Employees Retirement System. Approximately 100 quasi-governmental employers, including local and district health departments governed by KRS Chapter 212, state-supported universities and community colleges, mental health/mental retardation boards, domestic violence shelters, rape crisis centers, child advocacy centers, and other employers that are eligible to voluntarily cease participation in the Kentucky Employees Retirement System as provided by KRS 61.522 (excluding county attorneys, the Council on State Governments, the Kentucky Educational Television Foundation, Association of Commonwealth's Attorneys, the Kentucky High School Athletic Association, the Municipal Power Association of Kentucky, the Kentucky Office of Bar Admissions, the Nursing Home Ombudsman, the Kentucky Association of Regional Programs, and the Kentucky Association of Sexual Assault Programs). The number of individuals affected by this administrative regulation is unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The affected quasi-governmental employers will be required to provide the KPPA with information

concerning some persons that are providing services for the quasi-governmental employer as independent contractors, leased employees, or through another similar arrangement. If such persons are determined to be employees in regular full-time positions under KRS 61.510(5) and 61.510(21), the affected quasi-governmental employers will be required to prospectively treat the persons as "employees" in accordance with KRS Chapter 61, including reporting employee and employer contributions as required by KRS 61.675 and 105 KAR 1:140. Additionally, in the event of such a determination, the affected employers may be required to remit past delinquent employer contributions as required by KRS 61.552 and 61.675. Finally, the information provided by the KPPA to the state budget director's office and the Legislative Research Commission on the affected quasi-governmental employers may affect subsidies for retirement costs that a quasi-governmental employer may receive pursuant to KRS 61.5991(5) and 61.5991(6).

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities are eligible to receive subsidies for retirement costs pursuant to KRS 61.5991(5) and 61.5991(6).

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

(a) Initially: The costs associated with the implementation of this administrative regulation should be minimal.

(b) On a continuing basis: The costs associated with the implementation of this administrative regulation should be negligible.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the KPPA, which will carry out the implementation and enforcement of this regulation pursuant to KRS 61.505 and 61.5991, are paid from the Retirement Allowance Account (trust and agency funds).

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All affected quasi-governmental employers are subject to the same processes and procedures.

#### 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 approximately 100 quasi-governmental employers, including local and district health departments governed by KRS Chapter 212, state-supported universities and community colleges, mental health/mental retardation boards, domestic violence shelters, rape crisis centers, child advocacy centers, and other employers that are eligible to voluntarily cease participation in the Kentucky Employees Retirement System as provided by KRS 61.522 (excluding county attorneys, the Council on State Governments, the Kentucky Educational Television Foundation, Association of Commonwealth's Attorneys, the Kentucky High School Athletic Association, the Municipal Power Association of Kentucky, the Kentucky Office of Bar Admissions, the Nursing Home Ombudsman, the Kentucky Association of Regional Programs, and the Kentucky Association of Sexual Assault Programs). Additionally, this administrative regulation impacts the KPPA and the Kentucky Employees Retirement System.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61. 5991 and 61.645.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The effect of this administrative regulation on the expenditures and revenues of state government agencies in the first full year the administrative regulation is to be in effect is unknown. Local government agencies are not affected by this administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The effect of this administrative regulation on revenues of state government agencies in the first year the administrative regulation is to be in effect is unknown. Local government agencies are not affected by this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The effect of this administrative regulation on revenues of state government agencies in subsequent years the administrative regulation is to be in effect is unknown. Local government agencies are not affected by this administrative regulation.

(c) How much will it cost to administer this program for the first year? The cost to the KPPA to administer this administrative regulation in the first year should be minimal.

(d) How much will it cost to administer this program for subsequent years? The cost to the KPPA to administer this administrative regulation in subsequent years should be negligible.

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

Revenues (+/-): Unknown

Expenditures (+/-): Unknown

Other Explanation: As a result of this administrative regulation, all persons determined to be employees in regular full-time positions as defined by KRS 61.510(5) and 61.510(21) shall be treated prospectively from the determination as "employees" in accordance with KRS Chapter 61, including the required payment of employee and employer contributions to the KPPA on behalf of the Kentucky Employees Retirement System in accordance with KRS 61.675. Additionally, in the event of such a determination, affected employers may be required to remit past delinquent employer contributions as required by KRS 61.552 and 61.675.

(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. 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 is largely unknown. See subsequent responses for more details.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Regulated entities that comply with this regulation and KRS 61.5991 are eligible to receive subsidies toward retirement costs pursuant to KRS 61.5991(6). The exact dollar amounts of the subsidies are unknown.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Regulated entities that comply with this regulation and KRS 61.5991 are eligible to receive subsidies toward retirement costs pursuant to KRS 61.5991(6). The exact dollar amounts of the subsidies are unknown.

(c) How much will it cost the regulated entities for the first year? The cost to regulated entities in the first year this administrative regulation is to be in effect is unknown.

(d) How much will it cost the regulated entities for subsequent years? The cost to regulated entities in the subsequent years this administrative regulation is to be in effect is unknown.

Note: If specific dollar estimates cannot be determined, provide

a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-): Unknown

Expenditures (+/-): Unknown

Other Explanation: As previously stated, the exact dollar amounts of cost savings through subsidies that eligible regulated entities may receive are not known because the subsidies are at the discretion of the General Assembly and percentage-based. See KRS 61.5991(6). Additionally, the exact dollar amounts of expenditures by regulated entities as a result of this administrative regulation are unknown at this time. All persons determined to be employees in regular full-time positions as defined by KRS 61.510(5) and 61.510(21) shall be treated prospectively from the determination as "employees" in accordance with KRS Chapter 61, including the required payment of employer contributions to the KPPA on behalf of the Kentucky Employees Retirement System in accordance with KRS 61.675. Furthermore, in the event of such a determination, regulated entities may be required to remit past delinquent employer contributions as required by KRS 61.552 and 61.675.

(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 an overall negative or adverse economic impact on regulated entities (quasi-governmental employers), as the regulated entities that comply with this administrative regulation and KRS 61.5991 are eligible to receive subsidies for retirement costs.

#### STATEMENT OF EMERGENCY 300 KAR 1:021E

This emergency administrative regulation is necessary to immediately establish and implement the requirements for the distribution of the tourism recovery and investment funds appropriated by the General Assembly from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 and to extend the application deadlines given the recent flooding and State of Emergency in certain counties in Eastern Kentucky. The Tourism, Arts and Heritage Cabinet, through the Department of Tourism, will distribute the federal funds to eligible recipients. The emergency administrative regulation sets forth the process, including eligibility, applications, approvals, and reporting obligations. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor  
MICHAEL E. BERRY, Secretary

#### TOURISM, ARTS AND HERITAGE CABINET Department of Tourism (New Emergency Administrative Regulation)

**300 KAR 1:021E. Process for the distribution of tourism recovery and investment funds appropriated by the General Assembly in the 2022 Regular Session from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021.**

EFFECTIVE: August 25, 2022

RELATES TO: KRS 91A.350, 148.522, 148.525, Ky Acts Ch. 199 (RS 2022 HB 1)

STATUTORY AUTHORITY: KRS 148.525(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Executive Branch Budget for the 2022-2024 biennium appropriates to the Tourism, Arts and Heritage Cabinet under the budget unit Office of the Secretary a total of \$75,000,000 in fiscal year 2021-2022 from the State Fiscal Recovery Fund of the American Rescue Plan Act

of 2021. KRS 148.522 provides that the Kentucky Department of Tourism, within the Tourism, Arts and Heritage Cabinet, shall have the authority and responsibility for the promotion, development, and support services for the tourism industry within the Commonwealth. KRS 148.525(3) authorizes the Commissioner of the Department of Tourism to promulgate administrative regulations to carry out the provisions of KRS 148.522. This administrative regulation establishes a uniform and consistent process for the distribution of the tourism recovery and investment funds appropriated by the General Assembly in the 2022 Regular Session from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021.

Section 1. As soon as the funding is available pursuant to the American Rescue Plan Act of 2021, the Kentucky Department of Tourism shall develop and administer the process for distributing tourism recovery and investment funds appropriated by the General Assembly in the 2022 Regular Session from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 to eligible recipients.

#### Section 2. Definitions.

(1) The "Cabinet" refers to the Kentucky Tourism, Arts and Heritage Cabinet.

(2) The "Department" refers to the Kentucky Department of Tourism.

(3) A "tourism commission" means an organization defined as tourism and convention commission under KRS 91A.350, et. seq., and defined as a designated marketing organization or tourism region committee pursuant to 300 KAR 1:010.

(4) The "State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 (SLFRF)" means the federal funding available as part of the Coronavirus State and Local Fiscal Recovery Fund established under the American Rescue Plan Act (ARPA), Public Law 117-2 (March 11, 2021), as implemented by the Final Rule issued by the U.S. Department of Treasury in 31 C.F.R. Part 35.

(5) "Tourism Marketing Incentive Program" means the Regional Marketing and Matching Funds Program referred to in KRS 91A.390 and 300 KAR 1:010.

(6) "Recipient" means a grantee, tourism commission as defined herein, or other entity eligible to receive funds from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021, as appropriated by the General Assembly in the 2022 Regular Session.

(7) "Program Year" means fiscal year 2022-2023 and fiscal year 2023-2024. Funding allocations will be split between the two fiscal years unless a recipient requests and receives approval to receive the allocation all in one fiscal year.

(8) "Tranche 1 funding" means the \$15,000,000 appropriated by the General Assembly in Acts Chapter 199 (RS 2022 HB 1) L.1.(3)(a) in fiscal year 2021-2022 from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 for marketing and promoting tourism in Kentucky.

(9) "Tranche 2 funding" means the \$25,000,000 appropriated by the General Assembly in Acts Chapter 199 (RS 2022 HB 1) L.1.(3)(b) in fiscal year 2021-2022 from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 for marketing communities in Kentucky.

(10) "Tranche 3 funding" means the \$25,000,000 appropriated by the General Assembly in Acts Chapter 199 (RS 2022 HB 1) L.1.(3)(c) in fiscal year 2021-2022 from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 for attracting meetings and conventions in Kentucky.

(11) "Tranche 4 funding" means the \$10,000,000 appropriated by the General Assembly in Acts Chapter 199 (RS 2022 HB 1) L.1.(3)(d) in fiscal year 2021-2022 from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 for multi-jurisdiction collaborative destination marketing in Kentucky.

(12) "Matching funds" means monies received from a funding source other than federal funds.

Section 3. Eligibility. Eligibility for allocations of federal funds available as part of the Coronavirus State and Local Fiscal

Recovery Fund established under the American Rescue Plan Act will depend upon which tranche of money a recipient qualifies for in accordance with the parameters set forth in this regulation.

(1) To qualify for Tranche 1 funding, a grant recipient will be eligible for consideration if it markets and promotes Kentucky as a travel destination.

(2) To qualify for Tranche 2 funding, a grant recipient will be eligible for consideration if it is a tourism commission, as defined herein, who markets communities and provides ten (10) percent or more in Matching funds per application and amount awarded.

(3) To qualify for Tranche 3 funding, a grant recipient will be eligible for consideration if it is a tourism commission, as defined herein, whose counties include arenas, conference centers, or other meeting venues with a minimum of 5000 square feet or outdoor spaces used for sporting events, if it provides a plan for recruiting and attracting meetings and conventions.

(4) To qualify for Tranche 4 funding for the competitive grant program, a grant recipient will be eligible for consideration if at least five (5) tourism commissions, through a designated primary grantee, submit a marketing plan and budget for multi-jurisdiction collaborative destination marketing and can provide at least ten (10) percent in matching funds per project.

#### Section 4. Applications.

(1) Applications submitted by tourism commissions as defined herein are subject to the following schedule for submission:

(a) Tranche 2 funding applications open on August 1, 2022, and must be received by September 30, 2022;

(b) Tranche 3 funding applications open on August 8, 2022, and must be received by October 7, 2022;

(c) Tranche 4 funding applications open September 12, 2022, and must be received by November 4, 2022.

(d) If additional funding remains following this first round of funding, then a second round of applications will issue in FY 2023-2024 pursuant to a schedule that will be posted on the department's Web site.

(2) Applications for funds appropriated in Tranches 2, 3 and 4 must include documentation of the following at a minimum:

(a) Establish the entity qualifies as a "tourism commission" as defined herein (i.e., proof of non-profit status, letter from fiscal court that organization is part of city or county government, ordinance establishing commission);

(b) Provide a W-9 (showing Federal ID number and entity name);

(c) Demonstrate that the tourism commission was in business before the COVID-19 pandemic on March 6, 2020, and show the economic impact of the COVID-19 pandemic to be eligible to receive recovery and investment funds;

(d) Evidence that applicant is a Kentucky based organization such as proof of registration with the Kentucky Secretary of State or as a Special Purpose Governmental Entity through the Department of Local Government; and

(e) Complete Affidavit for Bidders, Offerors and Contractors.

(3) Applications for Tranche 2 and 4 funding must also include a notarized copy of each applicant's most recent fiscal year budget approved by the applicable governing body identifying the funds being used for the ten (10) percent or more in Matching funds.

(4) Applications for Tranche 2 funding shall describe how the funds will be used to market communities.

(a) Eligible expenses for Tranche 2 funding include:

1. Tourism publications and videos;
2. Media advertisements if fifty (50) miles from destination;
3. Press kits;
4. New billboards and signage if twenty (20) miles from destination;
5. Brochure distribution services;
6. Meeting and convention advertising expenses;
7. Group tour marketplace, meeting and conventions, and consumer travel show expenses;
8. Sponsorship or a bid fee of tourism trade shows, conventions, sporting events and other events;
9. Web site design excluding hosting;
10. Research studies and analysis;

11. Photography;
12. Content that is paid to a business for advertising purposes;
13. Influencers' assistance with social media; and
14. Other expenses if consistent with the purpose of the Regional Marketing and Matching Funds Program.

(b) Ineligible expenses for Tranche 2 funding include:

1. Billboards and signage that does not consist solely of language welcoming a visitor to a community or region;
2. Costs associated with construction of any permanent signage structure;
3. Previously existing signs or maintenance of signs;
4. Postage and freight;
5. Booth space or expenses for county fair or festivals;
6. Booth space or registration expenses at industrial solicitation events;
7. Expenses to attend a conference or meeting without promoting your destination unless expenses are for professional development or hospitality training;
8. Web sites that contain paid advertisements;
9. Sponsorship or bid fees of tourism trade shows, conventions, and other events;
10. Expenditures for in-kind amenities or hospitality events that include alcohol, gratuities, service charges, and tips;
11. Tourism industry events involving Kentucky Tourism Industry Association, Kentucky Association of Convention & Visitor Bureaus, in-state or local events and conferences, and Kentucky association meetings and conferences;
12. Research related to future capital projects;
13. Industrial incentive brochures;
14. General community relocation and development brochures;
15. City or county maps or directories that list businesses and services;
16. Programs, playbills, posters, table tents;
17. Membership and subscription solicitations;
18. Registration and entry forms;
19. Event and contest category or regulation material;
20. Quick print materials such as flyers, handbills, and circulars;
21. Entertainment;
22. Bumper stickers, banners, flags, postcards, lapel pins, or bags;
23. Prizes, trophies, plaques, decorations, paint supplies, and poster board;
24. Items for resale;
25. Amounts paid for Kentucky sales tax;
26. Stationery, letterhead, envelopes, general office supplies and materials;
27. Salaries or other compensation for the staff or personnel of a tourism commission;
28. General operating and administrative costs;
29. Finance charges or late payment fees;
30. In-kind contributions, which also shall not be included as part of an applicant's match;
31. Expenditures in violation of law; and
32. Other expenses deemed ineligible by the Department if inconsistent with the Regional Marketing and Matching Funds Program.

(5) Applications for Tranche 3 funding shall specify:

- (a) the counties within the tourism commission's jurisdictions that include arenas, conference centers, or other meeting venues with a minimum of 5,000 square feet or outdoor spaces used for sporting events; and
- (b) How the funds will be used to attract professionally organized meetings, conventions, conferences, exhibitions, expositions, and trade shows that involve:
  1. New events not held in the destination or venue for at least three years;
  2. Multi-day events contracted on or after July 1, 2022;
  3. Competitive bidding of events; and
  4. Attendees from outside the area (100 miles or more).
- (c) How the funds will be used to attract amateur and professional competitive sporting events or tournaments that involve:

1. New events not held in the destination or venue for at least three years;
  2. Multi-day events contracted on or after July 1, 2022;
  3. Competitive bidding of the event;
  4. Athletes from outside the area (100 miles or more); and
  5. A minimum size of the event of 100+ athletes and coaches.
- (d) For outdoor spaces used for sporting events, grant applications shall be event specific and not related to the overall square footage used.
- (e) Local festivals, in-state association meetings that rotate on an annual basis, weddings, fraternal events (unless a national conference), social events, and motor coach/group tours (unless a national conference) are not eligible for Tranche 3 funding.
- (f) Eligible expenses for the Tranche 3 funding include:
1. Marketing and advertising such as video, print, digital, sponsorships, on-site events and other expenses related to promoting the destination as a meeting/conference destination;
  2. Underwriting incentives for offsetting event expenses such as venue or room rental, transportation costs during events, audio visual rental and services, discount on food and beverage, pipe, drape, tables, and chairs;
  3. Per room night confirmed incentives for selection;
  4. New research and consultants to build sales strategies;
  5. Familiarization trips for meeting planners or board meetings with intent to host larger event;
  6. Sales missions for recruiting meetings or conventions;
  7. New third party lead generation fees;
  8. Refundable bid or RFP fees tied to hosting industry events and conferences;
  9. Retention incentives due to increased costs (specifically six (6) percent sales tax on meeting room rentals) for events already contracted but occurring after July 1, 2022; and
  10. Other expenses deemed eligible by the Department if consistent with the funding mandate of the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021.
- (g) Ineligible expenses for the Tranche 3 funding include:
1. Funds used to replace an organization's tourism funding commitment for existing budgets, marketing and/or staffing;
  2. Non-refundable bid or RFP fees;
  3. Renovations or building permanent structures at facility for event;
  4. Expenses from an event that was contracted prior to December 7, 2021;
  5. General operating or administrative expenses such as travel reimbursement and salaries;
  6. Purchase of permanent equipment;
  7. Purchase of alcohol for meetings, events, sponsorships or related functions;
  8. Hiring of permanent or temporary staff;
  9. Purchase or production of promotional items; and
  10. Other expenses deemed ineligible by the department if inconsistent with the funding mandate of the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021.
- (6) Applications for Tranche 4 funding shall specify:
- (a) the identity of the designated primary grantee, who will be the point of contact for plan and post-plan reporting, and at least four (4) tourist commissions applying for the grants;
  - (b) a multi-county marketing plan and budget that shows how the plan will assist in recovery from the pandemic, with priority given to initiatives that have the potential for long-term transformational impacts;
  - (c) The requested dollar amount up to the maximum of \$500,000;
  - (d) Eligible expenses for the Tranche 4 funding include:
1. Tourism publications and videos;
  2. Media advertisements if fifty (50) miles from destination;
  3. Press kits;
  4. New billboards and signage if twenty (20) miles from destination;
  5. Brochure distribution services;
  6. Meeting and convention advertising expenses;
  7. Group tour marketplace, meeting and conventions, and consumer travel show expenses;

8. Sponsorship or a bid fee of tourism trade shows, conventions, sporting events and other events;
  9. Web site design excluding hosting;
  10. Research studies and analysis;
  11. Photography;
  12. Content that is paid to a business for advertising purposes;
  13. Influencers' assistance with social media; and
  14. Other expenses deemed eligible by the department if consistent with the funding mandate of the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021.
- (e) Ineligible expenses for the Tranche 4 funding include:
1. Billboards and signage that does not consist solely of language welcoming a visitor to a community or region;
  2. Costs associated with construction of any permanent signage structure;
  3. Previously existing signs or maintenance of signs;
  4. Postage and freight;
  5. Booth space or expenses for county fair or festivals;
  6. Booth space or registration expenses at industrial solicitation events;
  7. Expenses to attend a conference or meeting without promoting your destination unless expenses are for professional development or hospitality training;
  8. Web sites that contain paid advertisements;
  9. Sponsorship or bid fees of tourism trade shows, conventions, and other events;
  10. Expenditures for in-kind amenities or hospitality events that include alcohol, gratuities, service charges, and tips;
  11. Tourism industry events involving Kentucky Tourism Industry Association, Kentucky Association of Convention & Visitor Bureaus, in-state or local events and conferences and Kentucky association meetings and conferences;
  12. Research related to future capital projects;
  13. Industrial incentive brochures;
  14. General community relocation and development brochures;
  15. City or county maps or directories that list businesses and services;
  16. Programs, playbills, posters, table tents;
  17. Membership and subscription solicitations;
  18. Registration and entry forms;
  19. Event and contest category or regulation material;
  20. Quick print materials such as flyers, handbills, and circulars;
  21. Entertainment;
  22. Bumper stickers, banners, flags, postcards, lapel pins, or bags;
  23. Prizes, trophies, plaques, decorations, paint supplies, and poster board;
  24. Items for resale;
  25. Amounts paid for Kentucky sales tax;
  26. Stationery, letterhead, envelopes, general office supplies and materials;
  27. Salaries or other compensation for the staff or personnel of a tourism commission;
  28. General operating and administrative costs;
  29. Finance charges or late payment fees;
  30. In-kind contributions, which also shall not be included as part of an applicant's match;
  31. Expenditures in violation of law; and
  32. Other expenses deemed ineligible by the Department if inconsistent with the funding mandate of the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021.

#### Section 5. Approval of Applications.

(1) With respect to the Tranche 2 funding, the Commissioner of Tourism shall administer the grant program by reviewing each application and determining the applicant's eligibility for funding. Applicant's funding amount will be determined by the formula for each county's share of economic impact based on the department's 2019 Economic Impact of Tourism in Kentucky study conducted by Tourism Economics.

(2) With respect to Tranche 3 funding, the Commissioner of Tourism shall administer the grant program by reviewing each

application and determining the applicant's eligibility for funding. Eligible tourism commissions will be awarded grants up to a maximum amount according to the following:

- (a) 125,000 square feet and above up to a maximum \$5 million;
- (b) 75,000 to 124,999 square feet up to a maximum \$3 million;
- (c) 35,000 to 74,999 square feet up to a maximum \$1.5 million;
- (d) 15,000 to 34,999 square feet up to a maximum \$500,000;
- (e) 10,000 to 14,999 square feet up to a maximum \$200,000;
- (f) 5,000 to 9,999 square feet up to a maximum of \$100,000; or
- (g) For outdoor spaces used for sporting events, up to a maximum of \$100,000 per event.

(3) With respect to Tranche 4 funding, the Commissioner of Tourism shall develop and administer a competitive grant program that oversees a review committee comprised of state employees within the cabinet. The review committee will utilize a categorical scoring method that considers the following:

- (a) The plan's ability to attract new visitors to Kentucky;
- (b) The plan's ability to assist in recovery from the COVID-19 pandemic;
- (c) The plan's potential for long-term transformational impacts and priority will be given to these initiatives;
- (d) The measurable economic impact to Kentucky;
- (e) The applicants' ability to execute and provide required reporting; and
- (f) New projects that demonstrate a level of creativity.

(4) Notification of all grant awards will be provided to each grantee or applicant by letter and then memorialized by a "Memorandum of Agreement" stating the amount and terms of the funding grant, which the grantee or applicant shall sign and return to the Kentucky Department of Tourism; or by a letter stating why an applicant's projects have been denied funding.

(5) All projects receiving funds from Tranche 1, 2 and 4 must be completed on or before December 31, 2024. Projects receiving funds from Tranche 3 need to be obligated by December 31, 2024 and the funds fully expended by December 31, 2026.

Section 6. Reporting. Recipients shall provide a report to the Department of Tourism and the Legislative Research Commission detailing expenditures and outcomes including return on investment for affected areas by September 1 of each year. Such reports shall be in a format designed to allow the Commonwealth of Kentucky to comply with the U.S. Treasury's SLFRF Compliance and Reporting Guidance (treasury.gov), incorporated by reference herein.

#### Section 7. Forfeited and Unused Funds.

- (1) Funds allocated to an approved project shall be forfeited if:
  - (a) Documentation required by the provisions of this administrative regulation is not submitted timely;
  - (b) An approved project does not materialize; or
  - (c) A completed project did not remain in compliance with program requirement.

(2) Funds used in violation of the program may be subject to remediation and recoupment. The Department of Tourism may identify funds used in violation through reporting or other sources. Recipients will be provided with an initial written notice of recoupment and an opportunity to submit a request for reconsideration before the Department of Tourism provides a final notice of recoupment. If the recipient receives an initial notice of recoupment and does not submit a request for reconsideration, the initial notice will be deemed the final notice. The Department of Tourism may pursue other forms of remediation and monitoring in conjunction with, or as an alternative to, recoupment.

(3) At the end of a program year, funds that are forfeited, subject to recoupment, or unused shall be available for additional rounds of application funding if obligated by December 31, 2024 and if spent by December 31, 2026.

Section 8. Audits. The department may request the State Auditor to audit a tourism project governed by this administrative regulation.

#### Section 9. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) U.S. Department of Treasury Final Rule for Coronavirus State and Local Fiscal Recovery Funds, 31 C.F.R. Part 35 (effective April 1, 2022);
  - (b) U.S. Department of Treasury Compliance and Reporting Guidance for the SLFRF Program (June 17, 2022);
  - (c) Kentucky Dept of Tourism/Tourism Recovery and Investment ARPA Application - Tranche 2 Application – tourism commissions (July 2022);
  - (d) Kentucky Dept of Tourism/Tourism Recovery and Investment ARPA Application - Tranche 3 Application – Meetings and Conventions (July 2022);
  - (e) Kentucky Dept of Tourism/Tourism Recovery and Investment ARPA Application - Tranche 4 Application – Multi-County (July 2022);
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, from the Department of Tourism, 500 Mero Street, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available at the Department of Tourism's Web site at [www.kytourism.com/industry/Programs](http://www.kytourism.com/industry/Programs); or For Tranche 2 Grant (DMO) 502/892-3217 or TAH KDTARPADMO; Tranche 3 Grant (Meetings & Conventions) 502/892-3229 or TAH KDTARPAMEET; Tranche 4 Grant (Multi County) 502/892-3231 or TAH KDTARPAMULTICO.

MICHAEL MANGEOT, Commissioner

MICHAEL E. BERRY, Secretary

APPROVED BY AGENCY: August 25, 2022

FILED WITH LRC: August 25, 2022 at 10:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this emergency administrative regulation shall be held on October 28, 2022, at Kentucky Department of Travel at 500 Mero Street, 5<sup>th</sup> Floor Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through October 31, 2022. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mangeot, Commissioner, 500 Mero Street, 5th Floor, Frankfort, Kentucky 40601, phone (502) 564-4270, fax (502) 564-1079, email: [Michael.mangeot@ky.gov](mailto:Michael.mangeot@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael A. Mangeot, Commissioner,

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a uniform and consistent process for the distribution of the tourism recovery and investment funds appropriated by the General Assembly in the 2022 Regular Session from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 and extends the application deadlines given the recent flooding and State of Emergency in certain counties in Eastern Kentucky.

(b) The necessity of this administrative regulation: This regulation is necessary so that those promotional projects within the tourism regional and local nonprofit organizations will be aware of the process for participation in the program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 148.522 authorizes the department to promulgate administrative regulations to implement or carry out the purposes of KRS Chapter 148.525(2).

(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 budget appropriation by establishing a process to implement the distribution of tourism recovery and investment funds.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Tourism anticipates more than one-hundred (100) applicants to participate in this program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendments. The regulation provides clarification about the process for distributing tourism recovery and investment funds appropriated by the General Assembly in the 2022 Regular Session from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 to eligible recipients.

(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 application cost to the entities to apply for the program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As recognized by the federal government in the American Rescue Plan, the tourism, travel, and hospitality industry was one of the most severely impacted as a result of the COVID-19 pandemic. This regulation provides much needed funding to eligible entities that will market and promote tourism in Kentucky, which will benefit all of the citizens of the Commonwealth.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: The Executive Branch Budget for the 2022-2024 biennium appropriates to the Tourism, Arts and Heritage Cabinet under the budget unit Office of the Secretary a total of \$75,000,000 in fiscal year 2021-2022 from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021.

(a) Initially: No expenses or an unknown amount will be incurred.

(b) On a continuing basis: No expenses or an unknown amount will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funding available as part of the Coronavirus State and Local Fiscal Recovery Fund established under the American Rescue Plan Act as implemented by the Final Rule issued by the U.S. Department of Treasury in 31 C.F.R. Part 35.

(7) Provide an assessment of whether an 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 new regulation does not establish or create a fee or increase funding.

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

(9) TIERING: Is tiering applied? Yes. The only tiering applicable in this regulation is in the Tranche 3 funds for meetings and conventions. The maximum grant amounts are tiered according to the square footage of arenas, conference centers, or other meeting venues located within the tourism commissions. All applicants who apply for any other incentives are eligible for general funding.

## 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? Kentucky Department of Tourism and local cities and counties located within tourism commissions will be positively 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. The appropriation by the General Assembly in Acts Chapter 199 (RS 2022 HB 1) L.1.(3)(a) in fiscal year 2021-2022 from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 for marketing and promoting tourism in Kentucky.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Expenditures and revenues for the Kentucky Department of Tourism will not change. The current budget of the Department of Tourism funds the administrative costs of the Program. Staff within the Department of Tourism administer the program. The monies that the Program distributes within the tourism regions are for tourism projects and are not used to administer the program. The monies distributed, however, may contribute to the revenues of the tourism commissions.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Unknown.

(b) How 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 from the administration of this administrative regulation. However, the Program itself is expected to generate revenue in the tourism industry itself and throughout the Commonwealth in terms of increase tourism dollars. If necessary, estimates can be provided based upon the most recent Compass Longwoods International Travel USA Visitor Profile.

(c) How much will it cost to administer this program for the first year? The Department of Tourism staff will administer the program.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs 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 (+/-): \$0 change

Expenditures (+/-): \$0 change

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? Unknown

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Unknown

(c) How much will it cost the regulated entities for the first year? No additional costs.

(d) How much will it cost the regulated entities for subsequent years? No additional costs.

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

Cost Savings (+/-): 0

Expenditures (+/-): 0

Other Explanation: 0

(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)]. Not applicable. There is no additional cost to charge and/or process the fees.

**STATEMENT OF EMERGENCY  
503 KAR 3:130E**

An emergency regulation, pursuant to KRS 13A.190(1)(a)(3), is necessary to comply with the statutory filing deadline of September 1, 2022 established in KRS 15A.070(1)(b). See House Bill 565 (R.S. 2022). An ordinary administrative regulation will not go into effect by September 1, 2022. Therefore, this emergency administrative regulation is necessary to comply with the statutory deadline. This administrative regulation will be replaced by an ordinary administrative regulation that is being filed with the emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation. No emergency administrative regulation governing the same subject matter has been filed within the previous nine months.

ANDY BESHEAR, Governor  
NICOLAI JILEK, Commissioner

**JUSTICE AND PUBLIC SAFETY CABINET  
Department of Criminal Justice Training  
(New Emergency Administrative Regulation)**

**503 KAR 3:130E. Online Basic and In-Service Training.**

EFFECTIVE: August 18, 2022

RELATES TO: KRS 15A.070, 15.440

STATUTORY AUTHORITY: KRS 15A.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.070(1) requires the Department of Criminal Justice Training to establish, supervise, and coordinate training programs and schools for law enforcement personnel. KRS 15A.070(5) authorizes the Department of Criminal Justice Training to promulgate administrative regulations. This administrative regulation establishes requirements for basic and annual in-service course instruction to be offered electronically and online through remote learning.

**Section 1. Definitions.**

(1) "Asynchronous learning" means online instruction that allows students to access content or participate in learning, but does not require students and instructors to participate at the same time or in the same place.

(2) "Blended learning" means a course of study that includes both traditional in person classroom instruction and synchronous learning or asynchronous learning.

(3) "Online learning" means instruction that takes place through electronic technologies and media over the internet.

(4) "Recruit" is defined by 503 KAR 3:005(9).

(5) "Student" means a trainee or recruit as defined by 503 KAR 3:005.

(6) "Synchronous learning" means online instruction that occurs between students and instructors at the same time, but not in the same place, using video technology.

(7) "Trainee" is defined by 503 KAR 3:005(12).

**Section 2. Implementation.** (1) By no later than January 1, 2024, at least ten percent (10%) of the total hours of course instruction required to be completed for basic training under KRS 15.440(1)(d) shall be made available electronically and online for candidates to complete through remote learning;

(2) By no later than January 1, 2025, at least thirty percent (30%) of the total course offerings required to be completed by an officer for annual in-service training under KRS 15.440(1)(e) that is offered or sponsored by the Department of Criminal Justice Training shall be made available electronically and online to complete through remote learning;

(3) The instruction provided by the Department of Criminal Justice Training under this section shall not be in the subject areas

that require the demonstration of use of physical skill for the purposes of evaluating the participant's proficiency; and

(4) The course offerings and instruction required to be provided under subsection (2) of this section shall be available throughout the entire calendar year and spread out over a reasonable period of time so as not to require attendance or participation for the entirety of a single work week.

**Section 3. Instruction Offered.** Online and blended courses shall be identified annually through the department's Web site at <https://www.docjt.ky.gov/> in the training area including through the registration system and course listings. The schedule of classes shall state whether a course is synchronous or asynchronous and identify any software and hardware requirements for participation in online class sessions.

**Section 4. Online Learning.** (1) A student participating in online learning through the department shall:

(a) Actively participate in class learning activities regardless of the delivery method;

(b) Successfully complete and submit all assignments for the online learning event within the deadline set for the specific online training event including:

1. Electronic documents;
2. Discussion boards;
3. Blogs;
4. Polls;
5. Group assignments; and
6. Any other assigned work from the instructor.

(c) Complete assignments, online lessons, and tests only in a location conducive to learning, free of distraction, that ensures the safety of the student.

(d) Comply with all course requirements within the time required as described in the Kentucky Law Enforcement Council approved curriculum or schedule book on the department's Web site at <https://www.docjt.ky.gov/> in the training area;

(e) Have equipment that meets the minimum requirements for the course;

(f) Have an approved internet browser as well as a stable internet connection and sufficient internet speed capable of meeting course requirements, including the ability to:

1. Stream online video;
2. Engage in web conferencing;
3. Receive information and documents; and
4. Use software programs required within the course; and

(g) Test equipment that will be used for the online course pursuant to individual course requirements at least five (5) days prior to the start of the online training.

(2) If a student is unable to meet technology requirements for the course or the student's testing indicates a problem for participation, the student shall contact the department at least five (5) days prior to the start of the online training to try to address the issue.

(3) If a student is unable to correct the issue prior to the start of the course, the student shall be removed from the course roster and may reenroll in another course at a later time.

(4) A student shall comply with 503 KAR Chapter 3.

**Section 5. Synchronous Learning.** (1) A student shall be:

(a) Viewed and able to be heard online by the instructor and other students; and

(b) Present online with appropriate equipment pursuant to individual course requirements.

(2) A student shall acknowledge as requested the student's attendance at all attendance checks during an online learning event.

**Section 6. Asynchronous Learning.** (1) For asynchronous learning that is not performed on the department campus, a trainee shall be exempt from the:

- (a) Attendance requirement in 503 KAR 3:020 Section 5(8);
- (b) Grooming and uniform requirements in 503 KAR 3:020 Section 5(3); and
- (c) Tobacco products usage and consumption of food or drink

prohibitions in 503 KAR 3:020 Section 5(10)(b).

(2) For asynchronous learning that is not performed on the department campus, a recruit shall be exempt from the:

(a) Attendance requirement in 503 KAR 3:010 Section 6(9);

(b) Grooming and uniform requirements in 503 KAR 3:010 Section 6(3); and

(c) Tobacco products usage and consumption of food or drink prohibitions in 503 KAR 3:010 Section 6(11)(c). 503 KAR 3:130E. Online Basic and In-Service Training

NICOLAI JILEK, Commissioner

APPROVED BY AGENCY: August 9, 2022

FILED WITH LRC: August 18, 2022 at 9:30 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on October 21, 2022, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. October 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:** Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, Justice.RegContact@ky.gov, telephone number (502) 564-8207, facsimile number (502) 564-6686.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker, Staff Attorney Manager/ Assistant General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for basic and annual in-service course instruction to be offered electronically and online through remote learning.

(b) The necessity of this administrative regulation: This administrative regulation meets statutory requirements in KRS 15A.070 and allows for online training of law enforcement trainees and recruits.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.070(1) requires the Department of Criminal Justice Training to establish, supervise, and coordinate training programs and schools for law enforcement personnel. KRS 15A.070(5) authorizes the Department of Criminal Justice Training to promulgate administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation makes provision for online training of law enforcement trainees and recruits.

(2) If 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 filing is not an amendment.

(b) The necessity of the amendment to this administrative regulation: The filing is not an amendment.

(c) How the amendment conforms to the content of the authorizing statutes: The filing is not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: The filing is not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 112 DOCJT employees, 8,159 law enforcement trainees, and 427 law

enforcement agencies.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Agencies with staff taking online learning courses and classes will have to procure the following equipment if not already within their agency. Computer equipment capable of web-conferencing and video streaming. System: minimum speed of 1.5 Mbps; audio 48 kbps; application sharing from 70 kbps to 500 kbps; webcams and microphones are required while connecting to Blackboard. Current Hardware Requirements. Operating System: Windows 10 or newer; Mac OS 10.14 Mojave or newer. Processor: 1 GHz or faster. RAM: 4 GB or higher. 20 GB of available hard-drive space. Screen resolution: 1280x1024 or higher. Reliable and capable internet connection (preferably wired) with download speed of at least 1.5 Mbps, 750 kbps upload. Software programs necessary to complete online class assignments Firewall modifications to allow for online course completion and allow for sending and receiving of documents from DOCJT's online learning management system. In addition, agencies' personnel will need functional and technical knowledge to allow them to take online learning events. This may require additional training for agency personnel.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Predicting estimated costs is largely unpredictable depending on whether an agency already possesses compatible equipment, infrastructure, and/or computer training. There are several cost factors that could be incurred to comply with the regulation. If figures are based on a full computer setup, the estimate for a computer setup is \$1,200 to include the hardware as well as any necessary software, local IT support, and a printer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Client travel costs associated with travel to Richmond or other training locations will be reduced (e.g., mileage, vehicle depreciation, per diems, lodging, etc.). In addition, this will allow agencies to have more options regarding scheduling their personnel for required training.

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

(a) Initially: \$521,100 (personnel cost and technology fee)

(b) On a continuing basis: approximately \$521,100 annually (personnel cost and technology fee)

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Law Enforcement Foundation Program Fund (KLEFPF).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fees. The regulation will require an additional \$521,100 for DOCJT staff and technology resources. \$212,400 for 2 additional staff members for online training who would not otherwise be needed, \$231,600 for blackboard based upon the estimated cost of additional users, and \$77,100 cost for classroom equipment and upgrades.

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Department of Criminal Justice Training, cities, counties, city and county law enforcement agencies, state law enforcement agencies, state university police departments, school district police departments, and special law enforcement officers.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.070

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

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

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

(c) How much will it cost to administer this program for the first year? The statute and regulation will require an additional \$521,100 for DOCJT staff and technology resources to implement the requirements set forth in 15A.070 and this administrative regulation. \$212,400 for 2 additional staff members for online training who would not otherwise be needed, \$231,600 for blackboard based upon the estimated cost of additional users, and \$77,100 cost for classroom equipment and upgrades. This regulation will provide positive impacts on affected agencies by lowering travel costs associated with traveling to Richmond or other training locations (e.g., mileage, vehicle depreciation, per diem, lodging, etc.). It will also allow agencies to have more options regarding scheduling their personnel for required training. It will possibly require some agencies to incur increased costs to meet online course requirements to include equipment, hardware, and modifications to their agencies firewall configurations. However, online classes are only one option for statutorily required training. Agencies not wishing to incur the potential costs will have several other options to receive their required training that are in a traditional face-to-face class.

(d) How much will it cost to administer this program for subsequent years? The statute and regulation will require an additional \$521,100 for DOCJT staff and technology resources to implement the requirements set forth in 15A.070 and this administrative regulation. \$212,400 for 2 additional staff members for online training who would not otherwise be needed, \$231,600 for blackboard based upon the estimated cost of additional users, and \$77,100 cost for classroom equipment and upgrades. See answer to (c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(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? For annual 40-hour in-service training, regulated entities who currently pay employees' per diem and motel expenses for training, are estimated \$380 per-person savings. However, this savings does not include the additional expenses of mileage and overtime travel costs that would be dependent on the length of travel for each entity. For basic training, regulated entities do not currently pay for per diem or motel expenses for recruits, so their savings for mileage and overtime travel costs are unable to be determined, as it will vary based on the length of travel for each entity.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Subsequent savings of the quantifiable in-service expenses will be accumulated per-person, per-year for each regulated entity, in addition to the unquantifiable expenses of mileage and overtime travel costs. Similarly, basic training savings per regulated entity are unable to be calculated because of the variable travel distance per client.

(c) How much will it cost the regulated entities for the first

year? In the initial year, regulated entities will be required to purchase laptop computers to include software and support for online training, estimated at \$1,200 per computer setup. This will be required for both basic training and in-service training. The total cost to regulated entities is variable based on the size of the department.

(d) How much will it cost the regulated entities for subsequent years? It is estimated that the lifespan of laptop computers purchased for online training will be approximately three years. Regulated entities should plan for the recurring cost of \$1,200 per purchased computer setup every three 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 change in the statute requiring online training and this administrative regulation together will cost the department over \$500,000.

#### STATEMENT OF EMERGENCY 807 KAR 5:001E

This emergency administrative regulation amendment is being promulgated to meet an imminent threat to public health, safety, or welfare caused by flooding in Eastern Kentucky between July 26, 2022, and July 30, 2022. Several gas, water, and sewer utilities, as a result of damage from flooding, will need to replace treatment and transmission facilities in order to meet necessary health and sanitation needs of the residents of Eastern Kentucky. This administrative regulation is being filed on an emergency basis to expedite the replacement of damaged infrastructure by temporarily removing the requirement that a water, gas, or sewer utility received a certificate of public convenience and necessity from the Public Service Commission before beginning construction to repair or replace damaged infrastructure. Temporarily removing this requirement will hasten repair by several weeks. This emergency regulation will not be replaced by an ordinary administrative regulation because the emergency repairs would have been initiated by Spring 2023.

ANDY BESHEAR, Governor  
KENT A. CHANDLER, Chairman

#### ENERGY AND ENVIRONMENT CABINET Public Service Commission (Emergency Amendment)

##### 807 KAR 5:001E. Rules of procedure.

EFFECTIVE: September 14, 2022

RELATES TO: KRS 61.870-884, 61.931-934, 65.810, Chapter 74, 278.010, 278.020(3), 278.100, 278.180, 278.300, 278.410, 322.340, 365.015, 369.102, 424.300, 45 C.F.R. 160.103, 47 C.F.R. 36, 20 U.S.C. 1232g

STATUTORY AUTHORITY: KRS 278.040(3), 278.260(2), 278.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the commission to promulgate [reasonable] administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.310 requires that the commission to promulgate reasonable administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.310 requires that all hearings and investigations before the commission shall be governed by rules promulgated by the commission. This

administrative regulation establishes requirements with respect to formal and informal proceedings before the commission.

Section 1. Definitions. (1) "Affiliate" means an entity:

- (a) That is wholly owned by a utility;
- (b) In which a utility has a controlling interest;
- (c) That wholly owns a utility;
- (d) That has a controlling interest in a utility; or
- (e) That is under common control with the utility.

(2) "Case" means a matter coming formally before the commission.

(3) "Commission" is defined by KRS 278.010(15).

(4) "Controlling interest in" and "under common control with" mean a utility or other entity if the utility or entity:

- (a) Directly or indirectly has the power to direct, or to cause the direction of, the management or policies of another entity; and
- (b) Exercises that power:
  - 1. Alone or through one (1) or more intermediary companies;
  - 2. In conjunction with, or pursuant to an agreement;
  - 3. Through ownership of ten (10) percent or more of the voting securities;
  - 4. Through common directors, officers, stockholders, voting or holding trusts, or associated companies;
  - 5. By contract; or
  - 6. Through direct or indirect means.

(5) "Electronic mail" means an electronic message that is sent to an electronic mail address and transmitted between two (2) or more telecommunication devices, computers, or electronic devices capable of receiving electronic messages.

(6) "Electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail can be sent or delivered, and consists of a user name or mailbox and a reference to an Internet domain.

(7) "Electronic signature" is defined by KRS 369.102(8).

(8) "Executive director" means the person appointed to the position established in KRS 278.100 or a person that he or she has designated to perform a duty or duties assigned to that position.

(9) "Paper" means, regardless of the medium on which it is recorded, an application, petition, or other initiating document, motion, complaint, answer, response, reply, notice, request for information, or other document that this administrative regulation or the commission directs or permits a party to file in a case.

(10) "Party" means a person who:

- (a) Initiates action through the filing of a formal complaint, application, or petition;
- (b) Files a tariff or tariff sheet with the commission pursuant to KRS 278.180 and 807 KAR 5:011 that the commission has suspended and established a case to investigate or review;
- (c) Is named as a defendant in a formal complaint filed pursuant to Section 20 of this administrative regulation;
- (d) Is granted leave to intervene pursuant to Section 4(11) of this administrative regulation; or
- (e) Is joined to a commission proceeding.

(11) "Person" is defined by KRS 278.010(2).

(12) "Signature" means a manual, facsimile, conformed, or electronic signatures.

(13) "Tariff" means the schedules of a utility's rates, charges, regulations, rules, tolls, terms, and conditions of service over which the commission has jurisdiction.

(14) "Utility" is defined by KRS 278.010(3).

(15) "Water district" means a special district formed pursuant to KRS 65.810 and Chapter 74.

(16) "Web site" means an identifiable site on the internet, including social media, which is accessible to the public.

Section 2. Hearings. The commission shall provide notice of hearing in a case by order except if a hearing is not concluded on the designated day and the presiding officer verbally announces the date for continuation of the hearing. A verbal announcement made by the presiding officer shall be deemed proper notice of the continued hearing.

Section 3. Duties of Executive Director. (1) Upon request, the

executive director shall:

- (a) Advise as to the form of a paper desired to be filed;
- (b) Provide general information regarding the commission's procedures and practices; and

(c) Make available from the commission's files, upon request, a document or record pertinent to a matter before the commission unless KRS 61.878 expressly exempts the document or record from inspection or release.

(2) The executive director shall reject for filing a document that on its face does not comply with 807 KAR Chapter 5.

Section 4. General Matters Pertaining to All Cases. (1) Address of the commission. All communications shall be addressed to: Public Service Commission, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40602.

(2) Case numbers and styles. Each case shall receive a number and a style descriptive of the subject matter. The number and style shall be placed on each subsequent paper filed in the case.

(3) Signing of papers.

(a) A paper shall be signed by the submitting party or attorney and shall include the name, address, telephone number, facsimile number, and electronic mail address, if any, of the attorney of record or submitting party.

(b) A paper shall be verified or under oath if required by statute, administrative regulation, or order of the commission.

(4) A person shall not file a paper on behalf of another person, or otherwise represent another person, unless the person is an attorney licensed to practice law in Kentucky or an attorney who has complied with SCR 3.030(2). An attorney who is not licensed to practice law in Kentucky shall present evidence of his or her compliance with SCR 3.030(2) if appearing before the commission.

(5) Amendments. Upon motion of a party and for good cause shown, the commission shall allow a complaint, application, answer, or other paper to be amended or corrected or an omission supplied. Unless the commission orders otherwise, the amendment shall not relate back to the date of the original paper.

(6) Witnesses and subpoenas.

(a) Upon the written request of a party to a proceeding or commission staff, subpoenas requiring the attendance of witnesses for the purpose of taking testimony may be signed and issued by a member of the commission.

(b) Subpoenas for the production of books, accounts, documents, or records (unless directed to issue by the commission on its own authority) may be issued by the commission or a commissioner, upon written request, stating as nearly as possible the books, accounts, documents, or records desired to be produced.

(c) A party shall submit a completed subpoena form with its written request as necessary.

(d) Every subpoena shall be served, in the manner prescribed by subsection (8) of this section, on a person whose information is being requested.

(e) Copies of all documents received in response to a subpoena shall be filed with the commission and furnished to all other parties to the case, except on motion and for good cause shown. Any other tangible evidence received in response to the subpoena shall be made available for inspection by the commission and all other parties to the action.

(7) Computation of time.

(a) In computing a period of time prescribed or allowed by order of the commission or by 807 KAR Chapter 5 or KRS Chapter 74 or 278, the day of the act, event, or default after which the designated period of time begins to run shall not be included.

(b) The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, a legal holiday, or other day commission offices are legally closed, in which event the period shall run until the end of the next day that is not a Saturday, a Sunday, a legal holiday, or other day commission offices are legally closed.

(8) Service.

(a) Unless the commission orders service upon a party and the party's attorney, service shall be made upon the party's attorney if

the party is represented by an attorney.

(b) Service upon an attorney or upon a party by the commission shall be made by sending a copy by electronic mail to the electronic mail address listed on papers that the attorney or party has submitted in the case. A paper that is served via electronic mail shall comply with Section 8(4) of this administrative regulation and shall include the sending of an electronic mail message that contains an electronic version of the commission order or a hyperlink that enables the recipient to access, view, and download an electronic copy of the commission order from the commission's Web site.

(c) If good cause exists, and upon the filing of a motion by a party to excuse a party from receiving service by electronic mail from the commission, the commission shall order service of papers on the party to be made in accordance with paragraph (d)1. or 2. of this subsection.

(d) Service upon an attorney or upon a party by the parties in a case shall be made by:

1. Delivering a copy to the attorney or party;
2. Mailing a copy by United States mail or other recognized mail carrier to the attorney or party at the last known address; or
3. Sending a copy by electronic mail to the electronic mail address listed on papers that the attorney or party has submitted in the case. A paper that is served via electronic mail shall comply with Section 8(4) of this administrative regulation.

(e) Service shall be complete upon mailing or electronic transmission. If a serving party learns that the mailing or electronic transmission did not reach the person to be served, the serving party shall take reasonable steps to immediately re-serve the party to be served, unless service is refused, in which case the serving party shall not be required to take additional action.

(9) Filing.

(a) Unless electronic filing procedures established in Section 8 of this administrative regulation are used, a paper shall not be deemed filed with the commission until the paper:

1. Is physically received by the executive director at the commission's offices during the commission's official business hours; and
2. Meets all applicable requirements of KRS Chapter 278 and KAR Title 807.

(b) The executive director shall endorse upon each paper or document accepted for filing the date of its filing. The endorsement shall constitute the filing of the paper or document.

(10) Privacy protection for filings.

(a) If a person files a paper containing personal information, the person shall encrypt or redact the paper so that personal information cannot be read. Personal information shall include a business name; an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:

1. The digits of a Social Security number or taxpayer identification number;
2. The month and date of an individual's birth;
3. The digits of an account number, credit card number, or debit card number that, in combination with any required security code, access code, or password, would permit access to an account;
4. A driver's license number, state identification card number, or other individual identification number issued by any agency;
5. A passport number or other identification number issued by the United States government;
6. "Individually identifiable health information" as defined by 45 C.F.R. 160.103, except for education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g; or
7. The address, phone number, or email address of an individual who is not a party and has not requested to be a party.

(b) To redact the paper, the filing party shall replace the identifiers with neutral placeholders or cover the identifiers with an indelible mark that so obscures the identifiers that the identifiers cannot be read.

(c) The responsibility to review for compliance with this section

and redact a paper shall rest with the party that files the paper.

(11) Intervention and parties.

(a) A person who wishes to become a party to a case before the commission may, by timely motion, request leave to intervene.

1. The motion shall include the movant's full name, mailing address, and electronic mail address and shall state his or her interest in the case and how intervention is likely to present issues or develop facts that will assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.

2. The motion may include a request by movant for delivery of commission orders by United States mail and shall state how good cause exists for that means of delivery to movant.

(b) The commission shall grant a person leave to intervene if the commission finds that he or she has made a timely motion for intervention and that he or she has a special interest in the case that is not otherwise adequately represented or that his or her intervention is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.

(c) Unless electronic filing procedures established in Section 8 of this administrative regulation are used in the case, a party shall serve a person granted leave to intervene with all papers that the party submits in the case after the order granting intervention, but the party is not required to provide any papers submitted prior to the issuance of that order unless the commission otherwise orders.

(d) Unless the commission finds good cause to order otherwise, a person granted leave to intervene in a case shall, as a condition of his or her intervention, be subject to the procedural schedule in existence in that case when the order granting the person's intervention is issued.

(e) A person who the commission has not granted leave to intervene in a case may file written comments regarding the subject matter of the case.

1. These comments shall be filed in the case record.

2. A person filing written comments shall not be deemed a party to the proceeding and need not be named as a party to an appeal.

(12) Requests for information.

(a) If permitted by administrative regulation or by order of the commission, a party may in accordance with this section request information from another party to the case. The requesting party shall serve its request upon the party from which it seeks the requested information and shall also file its request with the commission.

(b) Commission staff, through the commission's executive director, may request information from any party to a case on the commission's behalf.

(c) Unless otherwise established in administrative regulation, the commission shall establish by order in a case the time for parties to issue and to respond to requests for information.

(d) Responses to requests for information.

1. Responses to requests for information shall be appropriately bound, tabbed, and indexed.

2. Each response shall:

- a. Include the name of the witness responsible for responding to the questions related to the information provided; and
- b. Be answered under oath or, for representatives of a public or private corporation, a partnership, an association, or a governmental agency, be accompanied by a signed certification of the preparer or person supervising the preparation of the response on behalf of the person that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

3. If the requested information has previously been provided in the case, a responding party may, in lieu of providing the requested information, provide a reference to the specific location of the requested information in the case record.

4. A responding party shall make timely amendment to its prior response if the party obtains information that indicates that the response was incorrect when made or, though correct when made, is subsequently incorrect in any material respect.

5. If a party served with a request for information fails or

refuses to furnish all or part of the requested information, the party shall provide a written explanation of the specific grounds for the failure to completely and precisely respond.

6. The responding party shall file with the commission the party's response to a request for information and shall serve it upon all parties to a case.

(e) A party shall compel compliance with the party's request for information by motion to the commission, which shall include:

1. A description of the information requested;
2. The reasons why it is relevant to the issues in the case; and
3. The efforts taken to resolve any disagreement over the production of the requested information.

(13) Each report, specification, drawing, and plan that a professional engineer or professional land surveyor prepared and that is filed with the commission shall contain the seal or stamp and signature of that professional engineer or land surveyor in accordance with KRS 322.340.

(14) Consolidation of cases.

(a) The commission may order two (2) or more proceedings involving a similar question of law or fact to be consolidated if rights of the parties or the public interest will not be prejudiced.

(b) Upon ordering the consolidation of cases, the commission shall specify into which case the other case shall be consolidated.

(c) All papers received after the order of consolidation has been issued shall be filed in the record of the designated case.

(d) Papers filed prior to the order of consolidation shall remain in their respective case files.

Section 5. Motion Practice. (1) All requests for relief that are not required to be made in an application, petition, or written request shall be by motion. A motion shall state precisely the relief requested.

(2) Unless the commission orders otherwise, a party to a case shall file a response to a motion no later than seven (7) days from the date of filing of a motion.

(3) Unless the commission orders otherwise, a party shall file a reply no later than five (5) days of the filing of the most recent response to the party's motion. The reply shall be confined to points raised in the responses to which they are addressed, and shall not reiterate an argument already presented.

Section 6. Proof of Service. (1) Except as provided in Section 8 of this administrative regulation, all papers filed in a case shall contain proof of the date and manner of service of the papers on all parties.

(2) Proof shall be made by certificate of the filer's attorney, by affidavit of the person who served the papers, or by a comparable proof.

(3) The certificate or affidavit shall identify by name the person served and the date and method of service.

(4) Proof of electronic service shall state the electronic notification address of the person served.

Section 7. Filing Procedures. (1) Unless the commission orders otherwise or the electronic filing procedures established in Section 8 of this administrative regulation are used, if a paper is filed with the commission, an original unbound and ten (10) additional copies in paper medium shall be filed.

(2) Each paper filed with the commission shall conform to the requirements established in this subsection.

(a) Form. Each filing shall be printed or typewritten, double spaced, and on one (1) side of the page only.

(b) Size. Each filing shall be on eight and one-half (8 1/2) inches by eleven (11) inches paper.

(c) Font. Each filing shall be in type no smaller than twelve (12) point, except footnotes, which may be in type no smaller than ten (10) point.

(3) Except as provided for in Section 8 of this administrative regulation, a filing made with the commission outside its business hours shall be considered as filed on the commission's next business day.

(4) A paper submitted by facsimile transmission shall not be accepted.

Section 8. Electronic Filing Procedures. (1) Upon an applicant's timely election of the use of electronic filing procedures or upon order of the commission in a case that the commission has initiated on its own motion, the procedures established in this section shall be used in lieu of other filing procedures established in this administrative regulation.

(2) At least seven (7) days prior to the submission of its application, an applicant shall:

(a) File with the commission written notice of its election to use electronic filing procedures using the Notice of Election of Use of Electronic Filing Procedures form; and

(b) If the applicant does not have an account for electronic filing with the commission, register for an account at <http://psc.ky.gov/Account/Register>.

(3) All papers shall be filed with the commission by uploading an electronic version using the commission's E-Filing System at <http://psc.ky.gov>. In addition, the filing party shall file one (1) copy in paper medium with the commission as required by subsection (12)(a)2. of this section.

(4) (a) Audio or video files.

1. A file containing audio material shall be submitted in MP3 format.

2. A file containing video material shall be submitted in MPEG-4 format.

(b) Except as established in paragraph (a) of this subsection, each file in an electronic submission shall be:

1. In portable document format;
2. Search-capable;
3. Optimized for viewing over the Internet;

4. Bookmarked to distinguish sections of the paper, except that documents filed in response to requests for information need not be individually bookmarked; and

5. If scanned material, scanned at a resolution of 300 dots per inch.

(c) If, pursuant to Section 4(12) of this administrative regulation, a party is requested to provide information in the form of an electronic spreadsheet, the file containing the spreadsheet shall be submitted in an Excel spreadsheet format.

(5) (a) Each electronic submission shall include an introductory file in portable document format that is named "Read1st" and that contains:

1. A general description of the filing;
2. A list of all material to be filed in paper or physical medium but not included in the electronic submission; and
3. A statement that the materials in the electronic submission are a true representation of the materials in paper medium.

(b) The "Read1st" file and any other material that normally contains a signature shall contain a signature in the electronically submitted document.

(c) The electronic version of the cover letter accompanying the paper medium filing may be substituted for a general description.

(6)(a) An uploading session shall not exceed twenty (20) files or 100 megabytes.

(b) An individual file shall not exceed thirty (30) megabytes.

(c) If a submission exceeds the limitations established in paragraph (a) of this subsection, the filer shall make electronic submission in two (2) or more consecutive uploading sessions.

(7) If filing a paper with the commission, the filing party shall certify that:

(a) The electronic version of the paper is a true and accurate copy of each paper filed in paper medium;

(b) The electronic version of the paper has been submitted to the commission; and

(c) A copy of the paper in paper medium has been mailed to all parties that the commission has excused from electronic filing procedures.

(8)(a) Upon completion of an uploading session, the commission shall notify all parties of record by electronic mail that an electronic submission has been made.

(b) Upon a party's receipt of this notification, each party shall be solely responsible for accessing the commission's Web site at <http://psc.ky.gov> to view or download the submission.

(9) Unless a party objects to the use of electronic filing procedures in the party's motion for intervention, the party shall:

(a) Be deemed to have consented to the use of electronic filing procedures and the service of all papers, including orders of the commission, by electronic means; and

(b) File with the commission within seven (7) days of the date of an order of the commission granting the party's intervention a written statement that the party, or the party's authorized agent, possesses the facilities to receive electronic transmissions.

(10) In cases in which the commission has ordered the use of electronic filing procedures on its own motion, unless a party files with the commission an objection to the use of electronic filing procedures within seven (7) days of issuance of the order directing the use of electronic filing procedures, the party shall:

(a) Be deemed to have consented to the use of electronic filing procedures and the service of all papers, including orders of the commission, by electronic means; and

(b) File with the commission within seven (7) days of the date of an order directing the use of electronic filing procedures a written statement that the party, or the party's authorized agent, possesses the facilities to receive electronic transmissions.

(11) If a party objects to the use of electronic filing procedures and good cause exists to excuse the party from the use of electronic filing procedures, service of papers on and by it shall be made by mailing a copy by United States mail or other recognized mail carrier to the attorney or party at the last known address.

(12)(a) A paper shall be considered timely filed with the commission if:

1. It has been successfully transmitted in electronic medium to the commission within the time allowed for filing and meets all other requirements established in this administrative regulation and any order of the commission; and

2. The paper, in paper medium, is filed at the commission's offices no later than the second business day following the successful electronic transmission.

(b) Each party shall attach to the top of the paper medium submission a copy in paper medium of the electronic notification from the commission confirming receipt of its electronic submission.

(13) Except as established in this section, a party making a filing in accordance with the procedures established in this section shall not be required to comply with Section 4(8) of this administrative regulation.

Section 9. Hearings and Rehearings. (1) Unless a hearing is not required by statute, is waived by the parties in the case, or is found by the commission to be unnecessary for protection of substantial rights or not in the public interest, the commission shall conduct a hearing if:

(a) An order to satisfy or answer a complaint has been made and the person complained of has not satisfied the complaint; or

(b) A request for hearing has been made.

(2) Publication of notice.

(a) Upon the filing of an application, the commission may order an applicant to give notice on all persons who may be affected by serving a copy of the application upon those persons or by publishing notice of the filing.

1. The applicant shall bear the expense of providing the notice.

2. If the notice is provided by publication, the commission may designate the contents of the notice, the number of times and the time period in which the notice shall be published, and the newspaper in which the notice shall be published.

(b)1. The commission may order an applicant to give notice to the public of any hearing on the applicant's application, and shall order an applicant for a general adjustment of rates or reduction or discontinuance of service to give notice of any hearing on its application.

2. If notice of a hearing is published by the applicant in a newspaper, it shall be published at least one (1) time and not less than seven (7) nor more than twenty-one (21) days prior to the hearing in a newspaper of general circulation in the areas that will be affected.

3. Notice by mail shall be mailed not less than fourteen (14)

days nor more than twenty-one (21) days prior to the hearing.

4. Notice of hearing shall state the purpose, time, place, and date of hearing.

5. The applicant shall bear the expense of providing the notice.

6. Proof of publication shall be filed at or before the hearing.

(3) Investigation on commission's own motion.

(a) The commission may, on its own motion, conduct investigations and order hearings into any act or thing done or omitted to be done by a utility, which the commission believes is in violation of an order of the commission or KRS Chapters 74 or 278 or 807 KAR Chapter 5.

(b) The commission may, through its own experts, employees, or otherwise, obtain evidence the commission finds necessary or desirable in a formal proceeding in addition to the evidence presented by the parties.

(4) Conferences with commission staff. The commission, on its own motion, through its executive director or upon a motion of a party, may convene a conference in a case for the purpose of considering the possibility of settlement, the simplification or clarification of issues, or any other matter that may aid in the handling and disposition of the case. Unless the commission directs otherwise or the parties otherwise agree, participation in conferences with commission staff shall be limited to parties of the subject proceeding and their representatives.

(5) Conduct of hearings. Hearings shall be conducted before the commission or a commissioner or before a person designated by the commission to conduct a specific hearing.

(6) Stipulation of facts. By a stipulation in writing filed with the commission, the parties to a case may agree among themselves or with commission staff upon the facts or any portion of the facts involved in the controversy, which stipulation shall be regarded and used as evidence at the hearing.

(7) Testimony. All testimony given before the commission shall be given under oath or affirmation.

(8) Objections and exceptions. A party objecting to the admission or exclusion of evidence before the commission shall state the grounds for objection. Formal exceptions shall not be necessary and shall not be taken to rulings on objection.

(9) Record of evidence.

(a) The commission shall cause to be made a record of all hearings. Unless the commission orders otherwise, this record shall be a digital video recording.

1. A party to a case may, by motion made prior to the hearing, request that a stenographic transcript be made by a qualified reporter.

2. The commission shall grant the motion.

3. The requesting party shall bear the cost of the stenographic transcript and shall file a copy of the transcript with the commission within a reasonable time after completion of the hearing.

(b) The executive director shall cause to be made a written exhibit list, a written hearing log, and a written log listing the date and time of where each witness' testimony begins and ends on the digital video recording.

(c) If a party introduces an exhibit that is neither a document nor a photograph, the commission may direct a photograph of the exhibit be substituted for the exhibit.

Section 10. Briefs. Each brief shall be filed within the time fixed. A request for extension of time to file a brief shall be made to the commission by written motion.

Section 11. Documentary Evidence. (1) If documentary evidence is offered, the commission, in lieu of requiring the originals to be filed, may accept certified or otherwise authenticated copies of the documents or relevant portions, or may require evidence to be entered as a part of the record.

(2)(a) If relevant and material matter offered in evidence by any party is part of a book, paper, or document containing other matter not material or relevant, the party shall plainly designate the matter so offered.

(b) If immaterial matter unnecessarily encumbers the record, the book, paper, or document shall not be received in evidence, but may be described for identification, and if properly

authenticated, the relevant and material matter may be read into the record.

(3)(a) The sheets of each exhibit shall be numbered.

(b) If practical, the lines of each sheet shall also be numbered.

(c) If the exhibit consists of two (2) or more sheets, the first sheet or title page shall contain a brief statement of what the exhibit purports to show, with reference by sheet and line to illustrative or typical examples contained in the exhibit.

(d) Rate comparisons and other evidence shall be condensed into tables.

(4) Unless so ordered by the commission, the commission shall not receive in evidence or consider as a part of the record a book, paper, or other document for consideration in connection with the proceeding after the close of the testimony.

(5) Upon motion of a party to a proceeding, or upon the commission's own motion, the record of a case in the commission's files or any document on file with the commission may be made a part of the record by "reference only."

(a) The case or document made a part of the record by reference only shall not be physically incorporated into the record.

(b) Upon action in the Franklin Circuit Court, excerpts from the record of a case or part of a document may be made a part of the record before the court, at the request of a party.

Section 12. Financial Exhibit. (1) If this administrative regulation requires that a financial exhibit be annexed to the application, the exhibit shall:

(a) For a utility that had \$5,000,000 or more in gross annual revenue in the immediate past calendar year, cover operations for a twelve (12) month period, the period ending not more than ninety (90) days prior to the date the application is filed; or

(b) For a utility that had less than \$5,000,000 in gross annual revenue in the immediate past calendar year, comply with paragraph (a) of this subsection or cover operations for the twelve (12) month period contained in the utility's most recent annual report on file with the commission, and contain a statement that:

1. Material changes have not occurred since the end of that twelve (12) month period; or

2. Identifies all material changes that have occurred since the end of that twelve (12) month period.

(2) The exhibit shall disclose the following information in the order indicated:

(a) The amount and kinds of stock authorized;

(b) The amount and kinds of stock issued and outstanding;

(c) Terms of preference of preferred stock, cumulative or participating, or on dividends or assets or otherwise;

(d) A brief description of each mortgage on property of applicant, giving date of execution, name of mortgagor, name of mortgagee or trustee, amount of indebtedness authorized to be secured, and the amount of indebtedness actually secured, together with sinking fund provisions, if applicable;

(e) The amount of bonds authorized and amount issued, giving the name of the public utility that issued the same, describing each class separately and giving the date of issue, face value, rate of interest, date of maturity, and how secured, together with amount of interest paid during the last fiscal year;

(f) Each note outstanding, giving date of issue, amount, date of maturity, rate of interest, in whose favor, together with amount of interest paid during the last fiscal year;

(g) Other indebtedness, giving same by classes and describing security, if any, with a brief statement of the devolution or assumption of a portion of the indebtedness upon or by person or corporation if the original liability has been transferred, together with amount of interest paid during the last fiscal year;

(h) The rate and amount of dividends paid during the five (5) previous fiscal years, and the amount of capital stock on which dividends were paid each year; and

(i) A detailed income statement and balance sheet.

Section 13. Confidential Material. (1) All material on file with the commission shall be available for examination by the public unless the material is confidential.

(2) Procedure for determining confidentiality of material

submitted in a case.

(a) A request for confidential treatment of material shall be made by motion that:

1. Establishes specific grounds pursuant to KRS 61.878 for classification of that material as confidential;

2. States the time period for the material to be treated as confidential and the reasons for this time period; and

3. Includes ten (10) copies of the material in paper medium with those portions redacted for which confidentiality is sought, and, in a separate sealed envelope marked confidential, one (1) copy of the material in paper medium which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions that unless redacted would disclose confidential material.

a. Text pages or portions thereof that do not contain confidential material shall not be included in this identification.

b. If confidential treatment is sought for an entire document, written notification that the entire document is confidential may be filed with the document in lieu of the required highlighting.

(b) The motion and one (1) copy of the material in paper medium, with only those portions for which confidentiality is sought redacted, shall be served on all parties.

(c) The burden of proof to show that the material falls within the exclusions from disclosure requirements established in KRS 61.878 and to demonstrate the time period for the material to be considered as confidential shall be upon the moving party.

(d) Unless the commission orders otherwise, a party may respond to a motion for confidential treatment within seven (7) days after the motion is filed with the commission.

(e) If the case is being conducted using electronic filing procedures established in Section 8 of this administrative regulation, the parties shall comply with those procedures except that an unredacted copy of the material for which confidentiality is sought shall not be transmitted electronically.

(3) Procedure for determining confidentiality of material submitted outside of a case.

(a) A person who requests confidential treatment of material filed with the commission outside of a case shall submit a written request to the executive director that:

1. Establishes specific grounds pursuant to KRS 61.878 for classification of that material as confidential;

2. States the time period for the material to be treated as confidential and the reasons for this time period; and

3. Includes one (1) copy of the material in paper medium with those portions redacted for which confidentiality is sought, and, in a separate sealed envelope marked confidential, one (1) copy of the material in paper medium which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions that unless redacted would disclose confidential material.

a. Text pages or portions thereof that do not contain confidential material shall not be included in this identification.

b. If confidential treatment is sought for an entire document, written notification that the entire document is confidential may be filed with the document in lieu of the required highlighting.

(b) The burden of proof to show that the material falls within the exclusions from disclosure requirements established in KRS 61.878 and to demonstrate the time period for the material to be considered as confidential shall be upon the person requesting confidential treatment.

(c) The executive director, as official custodian of the commission's records, shall determine if the material is within an exclusion established in KRS 61.878 and the time period for the material to be considered as confidential and shall advise the requestor of the determination by letter.

(d) A person whose request for confidential treatment is denied, in whole or in part, by the executive director may make application within twenty (20) days of the executive director's decision to the commission for confidential treatment of the material in accordance with the procedures established in subsection (2) of this section.

1. The commission shall establish a case and shall review the application without regard to the executive director's determination



and in the same manner as it would review a motion for confidential treatment made pursuant to subsection (2) of this section.

2. The application shall comply with the requirements of subsection (2)(a) of this section.

(e) If the executive director denies a request for confidential treatment, the material for which confidential treatment was sought shall not be placed in the public record for twenty (20) days following the decision.

(4) Pending action by the commission on a motion for confidential treatment or by its executive director on a request for confidential treatment, the material specifically identified shall be accorded confidential treatment.

(5) If the motion for confidential treatment of material is denied, the material shall not be placed in the public record for the period permitted pursuant to KRS 278.410 to bring an action for review.

(6) Procedure for a party to request access to confidential material filed in a case.

(a) A party to a case before the commission shall not fail to respond to a request for information by the commission, commission staff, or another party on grounds of confidentiality.

1. A party seeking confidential treatment for its response to information requests shall follow the procedures for requesting confidentiality established in this administrative regulation.

2. A party's response to requests for information shall be served upon all parties, with only those portions for which confidential treatment is sought redacted.

(b) If the commission grants confidential protection to the responsive material and if parties have not entered into protective agreements, then a party may, by motion, request access to the material on the grounds that it is essential to the party's meaningful participation in the proceeding.

1. The motion shall include a description of efforts to enter into a protective agreement and unwillingness, if applicable, to enter into a protective agreement shall be fully explained.

2. A party may respond to the motion within seven (7) days after it is filed with the commission.

3. The commission shall determine if the movant is entitled to the material, and the manner and extent of the disclosure necessary to protect confidentiality.

(7) Requests for access to records pursuant to KRS 61.870 to 61.884.

(a) A time period prescribed in subsection (10)(a) of this section shall not limit the right of a person to request access to commission records pursuant to KRS 61.870 to 61.884.

(b) Upon a request filed pursuant to KRS 61.870 to 61.884, the commission shall respond in accordance with the procedure established in KRS 61.880.

(8) Procedure for request for access to confidential material. A person denied access to records requested pursuant to KRS 61.870 to 61.884 or to material deemed confidential by the commission in accordance with the procedures established in this section, may obtain this information only pursuant to KRS 61.870 to 61.884 and other applicable law.

(9) Use of confidential material. (a) A person who files any paper that contains material that has previously been deemed confidential or for which a request or motion for confidential treatment is pending shall submit one (1) copy of the paper with the adjudged or alleged confidential material underscored or highlighted, and ten (10) copies of the paper with those portions redacted; and

1. If the confidential status of the material has been determined previously, a written notice identifying the person who originally submitted the material, the date on which a determination on the materials confidentiality was made and, if applicable, the case number in which the determination was made; or

2. If a request for confidential treatment of the material is pending, a written notice identifying the person who made the request and the date on which the request was submitted.

(b) Material deemed confidential by the commission may be addressed and relied upon during a formal hearing by the procedure established in this paragraph.

1. The party seeking to address the confidential material shall

advise the commission prior to the use of the material.

2. A person other than commission employees not a party to a protective agreement related to the confidential material shall be excluded from the hearing room during testimony directly related to confidential material.

3. Any portion of the record directly related to the confidential material shall be sealed.

(10) Material granted confidentiality that later becomes publicly available or otherwise no longer warrants confidential treatment.

(a) Except as provided for in paragraphs (c) and (d) of this subsection, confidential treatment shall be afforded to material for the period specified in the commission's order or executive director's written decision.

1. At the end of this period, the material shall be placed in the public record without notice to the person who originally requested confidential treatment.

2. The person who sought confidential treatment for the material may request that the material continue to be treated as confidential but shall demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878.

(b) The person who sought confidential protection shall inform the commission in writing if material granted confidentiality becomes publicly available.

(c) If the commission becomes aware that material granted confidentiality is publicly available or otherwise no longer qualifies for confidential treatment, it shall by order so advise the person who sought confidential protection, giving ten (10) days to respond. If that material has been disclosed by someone other than the person who requested confidential treatment, in violation of a protective agreement or commission order, the information shall not be deemed to be publicly available and shall not be placed in the public record.

(d) If a request to inspect material granted confidential treatment is made during the period specified in the commission's order or executive director's written decision, the commission shall notify in writing the person who originally sought confidential treatment for the material and direct that party to demonstrate within twenty (20) days of receipt of the notice that the material still falls within the exclusions from disclosure requirements established in KRS 61.878.

1. If the party is unable to make the demonstration, the commission shall make the requested materials available for public inspection; or

2. If the party is able to make the demonstration, the commission shall deny the request for inspection.

(e) The material shall not be placed in the public record for twenty (20) days following an order finding that the material no longer qualifies for confidential treatment to allow the petitioner to seek a remedy afforded by law.

Section 14. Applications. (1) Each application shall state the full name, mailing address, and electronic mail address of the applicant, and shall contain fully the facts on which the application is based, with a request for the order, authorization, permission, or certificate desired and a reference to the particular law requiring or providing for the information.

(2) If a corporation, the applicant shall identify in the application the state in which it is incorporated and the date of its incorporation, attest that it is currently in good standing in the state in which it is incorporated, and, if it is not a Kentucky corporation, state if it is authorized to transact business in Kentucky.

(3) If a limited liability company, the applicant shall identify in the application the state in which it is organized and the date on which it was organized, attest that it is in good standing in the state in which it is organized, and, if it is not a Kentucky limited liability company, state if it is authorized to transact business in Kentucky.

(4) If the applicant is a limited partnership, a certified copy of its limited partnership agreement and all amendments, if any, shall be annexed to the application, or a written statement attesting that its partnership agreement and all amendments have been filed with the commission in a prior proceeding and referencing the case number of the prior proceeding.

Section 15. Applications for Certificates of Public Convenience and Necessity. (1) Application to bid on a franchise pursuant to KRS 278.020(3).

(a) Upon application to the commission by the utility for a certificate of convenience and necessity authorizing the applicant to bid on a franchise, license, or permit offered by a governmental agency, the applicant shall submit with its application:

1. The information required pursuant to Section 14 of this administrative regulation;
2. The name of the governmental agency offering the franchise;
3. The type of franchise offered; and
4. A statement showing the need and demand for service.

(b) If an applicant is successful in acquiring the franchise, license, or permit, the applicant shall file a copy with the commission using the commission's electronic tariff filing system.

(2) New construction or extension. Upon application for a certificate that the present or future public convenience or necessity requires, or will require, the construction or extension of any plant, equipment, property, or facility, the applicant, in addition to complying with Section 14 of this administrative regulation, shall submit with its application:

(a) The facts relied upon to show that the proposed construction or extension is or will be required by public convenience or necessity;

(b) Copies of franchises or permits, if any, from the proper public authority for the proposed construction or extension, if not previously filed with the commission;

(c) A full description of the proposed location, route, or routes of the proposed construction or extension, including a description of the manner of the construction and the names of all public utilities, corporations, or persons with whom the proposed construction or extension is likely to compete;

(d) One (1) copy in portable document format on electronic storage medium and two (2) copies in paper medium of:

1. Maps to suitable scale showing the location or route of the proposed construction or extension, as well as the location to scale of like facilities owned by others located anywhere within the map area with adequate identification as to the ownership of the other facilities; and

2. Plans and specifications and drawings of the proposed plant, equipment, and facilities;

(e) The manner in detail in which the applicant proposes to finance the proposed construction or extension; and

(f) An estimated annual cost of operation after the proposed facilities are placed into service.

(3) Extensions in the ordinary course of business. A certificate of public convenience and necessity shall not be required for extensions that do not create wasteful duplication of plant, equipment, property, or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general or contiguous area in which the utility renders service, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers. A certificate of public convenience and necessity shall not be required for any water district created pursuant to KRS Chapter 74, water association formed under KRS Chapter 273, or any other utility that provides the services described in KRS Chapter 278.010(3)(b) or KRS Chapter 278.010(3)(f) that intends to replace in-kind, restore, repair or fix any facility as a result of weather events occurring on or between July 26, 2022 and July 30, 2022. Any replacement, restoration, repair or fix shall be deemed extensions in the ordinary course of business. This section does not alter any requirement to seek commission approval pursuant to KRS Chapter 278.300 prior to incurring obligations related to these facilities.

(4) Renewal applications. An application for a renewal of a certificate of convenience and necessity shall be treated as an original application.

Section 16. Applications for General Adjustments of Existing

Rates. (1) Each application requesting a general adjustment of existing rates shall:

(a) Be supported by:

1. A twelve (12) month historical test period that may include adjustments for known and measurable changes; or
2. A fully forecasted test period; and

(b) Include:

1. A statement of the reason the adjustment is required;
2. A certified copy of a certificate of assumed name as required by KRS 365.015 or a statement that a certificate is not necessary;
3. New or revised tariff sheets, if applicable in a format that complies with 807 KAR 5:011 with an effective date not less than thirty (30) days from the date the application is filed;
4. New or revised tariff sheets, if applicable, identified in compliance with 807 KAR 5:011, shown either by providing:
  - a. The present and proposed tariffs in comparative form on the same sheet side by side or on facing sheets side by side; or
  - b. A copy of the present tariff indicating proposed additions by italicized inserts or underscoring and striking over proposed deletions; and
5. A statement that notice has been given in compliance with Section 17 of this administrative regulation with a copy of the notice.

(2) Notice of intent. A utility with gross annual revenues greater than \$5,000,000 shall notify the commission in writing of its intent to file a rate application at least thirty (30) days, but not more than sixty (60) days, prior to filing its application.

(a) The notice of intent shall state if the rate application will be supported by a historical test period or a fully forecasted test period.

(b) Upon filing the notice of intent, an application may be made to the commission for permission to use an abbreviated form of newspaper notice of proposed rate increases provided the notice includes a coupon that may be used to obtain a copy from the applicant of the full schedule of increases or rate changes.

(c) Upon filing the notice of intent with the commission, the applicant shall mail to the Attorney General's Office of Rate Intervention a copy of the notice of intent or send by electronic mail in a portable document format, to [rateintervention@ag.ky.gov](mailto:rateintervention@ag.ky.gov).

(3) Notice given pursuant to Section 17 of this administrative regulation shall satisfy the requirements of 807 KAR 5:051, Section 2.

(4) Each application supported by a historical test period shall include the following information or a statement explaining why the required information does not exist and is not applicable to the utility's application:

(a) A complete description and quantified explanation for all proposed adjustments with proper support for proposed changes in price or activity levels, if applicable, and other factors that may affect the adjustment;

(b) If the utility has gross annual revenues greater than \$5,000,000, the written testimony of each witness the utility proposes to use to support its application;

(c) If the utility has gross annual revenues less than \$5,000,000 the written testimony of each witness the utility proposes to use to support its application or a statement that the utility does not plan to submit written testimony;

(d) A statement estimating the effect that each new rate will have upon the revenues of the utility including, at minimum, the total amount of revenues resulting from the increase or decrease and the percentage of the increase or decrease;

(e) If the utility provides electric, gas, water, or sewer service, the effect upon the average bill for each customer classification to which the proposed rate change will apply;

(f) If the utility is an incumbent local exchange company, the effect upon the average bill for each customer class for the proposed rate change in basic local service;

(g) A detailed analysis of customers' bills whereby revenues from the present and proposed rates can be readily determined for each customer class;

(h) A summary of the utility's determination of its revenue requirements based on return on net investment rate base, return on capitalization, interest coverage, debt service coverage, or

operating ratio, with supporting schedules;

(i) A reconciliation of the rate base and capital used to determine its revenue requirements;

(j) A current chart of accounts if more detailed than the Uniform System of Accounts;

(k) The independent auditor's annual opinion report, with written communication from the independent auditor to the utility, if applicable, which indicates the existence of a material weakness in the utility's internal controls;

(l) The most recent Federal Energy Regulatory Commission or Federal Communication Commission audit reports;

(m) The most recent FERC Financial Report FERC Form No.1, FERC Financial Report FERC Form No. 2, or Public Service Commission Form T (telephone);

(n) A summary of the utility's latest depreciation study with schedules by major plant accounts, except that telecommunications utilities that have adopted the commission's average depreciation rates shall provide a schedule that identifies the current and test period depreciation rates used by major plant accounts. If the required information has been filed in another commission case, a reference to that case's number shall be sufficient;

(o) A list of all commercially available or in-house developed computer software, programs, and models used in the development of the schedules and work papers associated with the filing of the utility's application. This list shall include:

1. Each software, program, or model;
2. What the software, program, or model was used for;
3. The supplier of each software, program, or model;
4. A brief description of the software, program, or model; and
5. The specifications for the computer hardware and the operating system required to run the program;

(p) Prospectuses of the most recent stock or bond offerings;

(q) The annual report to shareholders or members and statistical supplements covering the two (2) most recent years from the utility's application filing date;

(r) The monthly managerial reports providing financial results of operations for the twelve (12) months in the test period;

(s) A copy of the utility's annual report on Form 10-K as filed with the Securities and Exchange Commission for the most recent two (2) years, any Form 8-K issued during the past two (2) years, and any Form 10-Q issued during the past six (6) quarters updated as current information becomes available;

(t) If the utility had amounts charged or allocated to it by an affiliate or general or home office or paid monies to an affiliate or general or home office during the test period or during the previous three (3) calendar years, the utility shall file:

1. A detailed description of the method and amounts allocated or charged to the utility by the affiliate or general or home office for each charge allocation or payment;
2. An explanation of how the allocator for the test period was determined; and

3. All facts relied upon, including other regulatory approval, to demonstrate that each amount charged, allocated, or paid during the test period was reasonable;

(u) If the utility provides gas, electric, water, or sewage utility service and has annual gross revenues greater than \$5,000,000, a cost of service study based on a methodology generally accepted within the industry and based on current and reliable data from a single time period; and

(v) Local exchange carriers with more than 50,000 access lines shall file:

1. A jurisdictional separations study consistent with 47 C.F.R. Part 36; and

2. Service specific cost studies to support the pricing of all services that generate annual revenue greater than \$1,000,000 except local exchange access:

- a. Based on current and reliable data from a single time period; and
- b. Using generally recognized fully allocated, embedded, or incremental cost principles.

(5) Upon good cause shown, a utility may request pro forma adjustments for known and measurable changes to ensure fair,

just, and reasonable rates based on the historical test period. The following information shall be filed with each application requesting pro forma adjustments or a statement explaining why the required information does not exist and is not applicable to the utility's application:

(a) A detailed income statement and balance sheet reflecting the impact of all proposed adjustments;

(b) The most recent capital construction budget containing at least the period of time as proposed for any pro forma adjustment for plant additions;

(c) For each proposed pro forma adjustment reflecting plant additions, the following information:

1. The starting date of the construction of each major component of plant;

2. The proposed in-service date;

3. The total estimated cost of construction at completion;

4. The amount contained in construction work in progress at the end of the test period;

5. A schedule containing a complete description of actual plant retirements and anticipated plant retirements related to the pro forma plant additions including the actual or anticipated date of retirement;

6. The original cost and the cost of removal and salvage for each component of plant to be retired during the period of the proposed pro forma adjustment for plant additions;

7. An explanation of differences, if applicable, in the amounts contained in the capital construction budget and the amounts of capital construction cost contained in the pro forma adjustment period; and

8. The impact on depreciation expense of all proposed pro forma adjustments for plant additions and retirements;

(d) The operating budget for each month of the period encompassing the pro forma adjustments; and

(e) The number of customers to be added to the test period end level of customers and the related revenue requirements impact for all pro forma adjustments with complete details and supporting work papers.

(6) All applications requesting a general adjustment in rates supported by a fully forecasted test period shall comply with the requirements established in this subsection.

(a) The financial data for the forecasted period shall be presented in the form of pro forma adjustments to the base period.

(b) Forecasted adjustments shall be limited to the twelve (12) months immediately following the suspension period.

(c) Capitalization and net investment rate base shall be based on a thirteen (13) month average for the forecasted period.

(d) After an application based on a forecasted test period is filed, there shall be no revisions to the forecast, except for the correction of mathematical errors, unless the revisions reflect statutory or regulatory enactments that could not, with reasonable diligence, have been included in the forecast on the date it was filed. There shall be no revisions filed within thirty (30) days of a scheduled hearing on the rate application.

(e) The commission may require the utility to prepare an alternative forecast based on a reasonable number of changes in the variables, assumptions, and other factors used as the basis for the utility's forecast.

(f) The utility shall provide a reconciliation of the rate base and capital used to determine its revenue requirements.

(7) Each application requesting a general adjustment in rates supported by a fully forecasted test period shall include the following or a statement explaining why the required information does not exist and is not applicable to the utility's application:

(a) The written testimony of each witness the utility proposes to use to support its application, which shall include testimony from the utility's chief officer in charge of Kentucky operations on the existing programs to achieve improvements in efficiency and productivity, including an explanation of the purpose of the program;

(b) The utility's most recent capital construction budget containing at a minimum a three (3) year forecast of construction expenditures;

(c) A complete description, which may be filed in written

testimony form, of all factors used in preparing the utility's forecast period. All econometric models, variables, assumptions, escalation factors, contingency provisions, and changes in activity levels shall be quantified, explained, and properly supported;

(d) The utility's annual and monthly budget for the twelve (12) months preceding the filing date, the base period, and forecasted period;

(e) A statement of attestation signed by the utility's chief officer in charge of Kentucky operations, which shall provide:

1. That the forecast is reasonable, reliable, made in good faith, and that all basic assumptions used in the forecast have been identified and justified;

2. That the forecast contains the same assumptions and methodologies as used in the forecast prepared for use by management, or an identification and explanation for differences that exist, if applicable; and

3. That productivity and efficiency gains are included in the forecast;

(f) For each major construction project that constitutes five (5) percent or more of the annual construction budget within the three (3) year forecast, the following information shall be filed:

1. The date the project was started or estimated starting date;

2. The estimated completion date;

3. The total estimated cost of construction by year exclusive and inclusive of allowance for funds used during construction ("AFUDC") or interest during construction credit; and

4. The most recent available total costs incurred exclusive and inclusive of AFUDC or interest during construction credit;

(g) For all construction projects that constitute less than five (5) percent of the annual construction budget within the three (3) year forecast, the utility shall file an aggregate of the information requested in paragraph (f)3 and 4 of this subsection;

(h) A financial forecast corresponding to each of the three (3) forecasted years included in the capital construction budget. The financial forecast shall be supported by the underlying assumptions made in projecting the results of operations and shall include the following information:

1. Operating income statement (exclusive of dividends per share or earnings per share);

2. Balance sheet;

3. Statement of cash flows;

4. Revenue requirements necessary to support the forecasted rate of return;

5. Load forecast including energy and demand (electric);

6. Access line forecast (telephone);

7. Mix of generation (electric);

8. Mix of gas supply (gas);

9. Employee level;

10. Labor cost changes;

11. Capital structure requirements;

12. Rate base;

13. Gallons of water projected to be sold (water);

14. Customer forecast (gas, water);

15. Sales volume forecasts in cubic feet (gas);

16. Toll and access forecast of number of calls and number of minutes (telephone); and

17. A detailed explanation of other information provided, if applicable;

(i) The most recent Federal Energy Regulatory Commission or Federal Communications Commission audit reports;

(j) The prospectuses of the most recent stock or bond offerings;

(k) The most recent FERC Financial Report FERC Form No.1, FERC Financial Report FERC Form No.2, or Public Service Commission Form T (telephone);

(l) The annual report to shareholders or members and the statistical supplements covering the most recent two (2) years from the application filing date;

(m) The current chart of accounts if more detailed than the Uniform System of Accounts chart;

(n) The latest twelve (12) months of the monthly managerial reports providing financial results of operations in comparison to the forecast;

(o) Complete monthly budget variance reports, with narrative explanations, for the twelve (12) months immediately prior to the base period, each month of the base period, and any subsequent months, as they become available;

(p) A copy of the utility's annual report on Form 10-K as filed with the Securities and Exchange Commission for the most recent two (2) years, and any Form 8-K issued during the past two (2) years, and any Form 10-Q issued during the past six (6) quarters;

(q) The independent auditor's annual opinion report, with any written communication from the independent auditor to the utility that indicates the existence of a material weakness in the utility's internal controls;

(r) The quarterly reports to the stockholders for the most recent five (5) quarters;

(s) The summary of the latest depreciation study with schedules itemized by major plant accounts, except that telecommunications utilities that have adopted the commission's average depreciation rates shall provide a schedule that identifies the current and base period depreciation rates used by major plant accounts. If the required information has been filed in another commission case, a reference to that case's number shall be sufficient;

(t) A list of all commercially available or in-house developed computer software, programs, and models used in the development of the schedules and work papers associated with the filing of the utility's application. This list shall include:

1. Each software, program, or model;

2. What the software, program, or model was used for;

3. The supplier of each software, program, or model;

4. A brief description of the software, program, or model; and

5. The specifications for the computer hardware and the operating system required to run the program;

(u) If the utility had amounts charged or allocated to it by an affiliate or a general or home office or paid monies to an affiliate or a general or home office during the base period or during the previous three (3) calendar years, the utility shall file:

1. A detailed description of the method and amounts allocated or charged to the utility by the affiliate or general or home office for each allocation or payment;

2. The method and amounts allocated during the base period and the method and estimated amounts to be allocated during the forecasted test period;

3. An explanation of how the allocator for both the base period and the forecasted test period were determined; and

4. All facts relied upon, including other regulatory approval, to demonstrate that each amount charged, allocated, or paid during the base period is reasonable;

(v) If the utility provides gas, electric, sewage, or water utility service and has annual gross revenues greater than \$5,000,000 in the division for which a rate adjustment is sought, a cost of service study based on a methodology generally accepted within the industry and based on current and reliable data from a single time period; and

(w) Incumbent local exchange carriers with fewer than 50,000 access lines shall not be required to file cost of service studies, except as directed by the commission. Local exchange carriers with more than 50,000 access lines shall file:

1. A jurisdictional separations study consistent with 47 C.F.R. Part 36; and

2. Service specific cost studies to support the pricing of all services that generate annual revenue greater than \$1,000,000 except local exchange access:

a. Based on current and reliable data from a single time period; and

b. Using generally recognized fully allocated, embedded, or incremental cost principles.

(8) Each application seeking a general adjustment in rates supported by a forecasted test period shall include:

(a) A jurisdictional financial summary for both the base period and the forecasted period that details how the utility derived the amount of the requested revenue increase;

(b) A jurisdictional rate base summary for both the base period and the forecasted period with supporting schedules, which include

detailed analyses of each component of the rate base;

(c) A jurisdictional operating income summary for both the base period and the forecasted period with supporting schedules, which provide breakdowns by major account group and by individual account;

(d) A summary of jurisdictional adjustments to operating income by major account with supporting schedules for individual adjustments and jurisdictional factors;

(e) A jurisdictional federal and state income tax summary for both the base period and the forecasted period with all supporting schedules of the various components of jurisdictional income taxes;

(f) Summary schedules for both the base period and the forecasted period (the utility may also provide a summary segregating those items it proposes to recover in rates) of organization membership dues; initiation fees; expenditures at country clubs; charitable contributions; marketing, sales, and advertising expenditures; professional service expenses; civic and political activity expenses; expenditures for employee parties and outings; employee gift expenses; and rate case expenses;

(g) Analyses of payroll costs including schedules for wages and salaries, employee benefits, payroll taxes, straight time and overtime hours, and executive compensation by title;

(h) A computation of the gross revenue conversion factor for the forecasted period;

(i) Comparative income statements (exclusive of dividends per share or earnings per share), revenue statistics and sales statistics for the five (5) most recent calendar years from the application filing date, the base period, the forecasted period, and two (2) calendar years beyond the forecast period;

(j) A cost of capital summary for both the base period and forecasted period with supporting schedules providing details on each component of the capital structure;

(k) Comparative financial data and earnings measures for the ten (10) most recent calendar years, the base period, and the forecast period;

(l) A narrative description and explanation of all proposed tariff changes;

(m) A revenue summary for both the base period and forecasted period with supporting schedules, which provide detailed billing analyses for all customer classes; and

(n) A typical bill comparison under present and proposed rates for all customer classes.

(9) The commission shall notify the applicant of any deficiencies in the application within thirty (30) days of the application's submission. An application shall not be accepted for filing until the utility has cured all noted deficiencies.

(10) A request for a waiver from the requirements of this section shall include the specific reasons for the request. The commission shall grant the request upon good cause shown by the utility. In determining if good cause has been shown, the commission shall consider:

(a) If other information that the utility would provide if the waiver is granted is sufficient to allow the commission to effectively and efficiently review the rate application;

(b) If the information that is the subject of the waiver request is normally maintained by the utility or reasonably available to it from the information that it maintains; and

(c) The expense to the utility in providing the information that is the subject of the waiver request.

Section 17. Notice of General Rate Adjustment. Upon filing an application for a general rate adjustment, a utility shall provide notice as established in this section.

(1) Public postings.

(a) A utility shall post at its place of business a copy of the notice no later than the date the application is submitted to the commission.

(b) A utility that maintains a Web site shall, within five (5) business days of the date the application is submitted to the commission, post on its Web sites:

1. A copy of the public notice; and
2. A hyperlink to the location on the commission's Web site

where the case documents are available.

(c) The information required in paragraphs (a) and (b) of this subsection shall not be removed until the commission issues a final decision on the application.

(2) Customer Notice.

(a) If a utility has twenty (20) or fewer customers, the utility shall mail a written notice to each customer no later than the date on which the application is submitted to the commission.

(b) If a utility has more than twenty (20) customers, it shall provide notice by:

1. Including notice with customer bills mailed no later than the date the application is submitted to the commission;

2. Mailing a written notice to each customer no later than the date the application is submitted to the commission;

3. Publishing notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in the utility's service area, the first publication to be made no later than the date the application is submitted to the commission; or

4. Publishing notice in a trade publication or newsletter delivered to all customers no later than the date the application is submitted to the commission.

(c) A utility that provides service in more than one (1) county may use a combination of the notice methods listed in paragraph (b) of this subsection.

(3) Proof of Notice. A utility shall file with the commission no later than forty-five (45) days from the date the application was initially submitted to the commission:

(a) If notice is mailed to its customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, that notice was mailed to all customers, and the date of the mailing;

(b) If notice is published in a newspaper of general circulation in the utility's service area, an affidavit from the publisher verifying the contents of the notice, that the notice was published, and the dates of the notice's publication; or

(c) If notice is published in a trade publication or newsletter delivered to all customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, the mailing of the trade publication or newsletter, that notice was included in the publication or newsletter, and the date of mailing.

(4) Notice Content. Each notice issued in accordance with this section shall contain:

(a) The proposed effective date and the date the proposed rates are expected to be filed with the commission;

(b) The present rates and proposed rates for each customer classification to which the proposed rates will apply;

(c) The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rates will apply;

(d) The amount of the average usage and the effect upon the average bill for each customer classification to which the proposed rates will apply, except for local exchange companies, which shall include the effect upon the average bill for each customer classification for the proposed rate change in basic local service;

(e) A statement that a person may examine this application at the offices of (utility name) located at (utility address);

(f) A statement that a person may examine this application at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at <http://psc.ky.gov>;

(g) A statement that comments regarding the application may be submitted to the Public Service Commission through its Web site or by mail to Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602;

(h) A statement that the rates contained in this notice are the rates proposed by (utility name) but that the Public Service Commission may order rates to be charged that differ from the proposed rates contained in this notice;

(i) A statement that a person may submit a timely written request for intervention to the Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602, establishing the grounds for the request including the status and interest of the party; and

(j) A statement that if the commission does not receive a written request for intervention within thirty (30) days of initial publication or mailing of the notice, the commission may take final action on the application.

(5) Abbreviated form of notice. Upon written request, the commission may grant a utility permission to use an abbreviated form of published notice of the proposed rates, provided the notice includes a coupon that may be used to obtain all of the required information.

Section 18. Application for Authority to Issue Securities, Notes, Bonds, Stocks, or Other Evidences of Indebtedness. (1) An application for authority to issue securities, notes, bonds, stocks, or other evidences of indebtedness payable at periods of more than two (2) years from the date thereof shall contain:

(a) The information required by Section 14 of this administrative regulation;

(b) A general description of the applicant's property and the field of its operation, together with a statement of the original cost of the same and the cost to the applicant. If it is impossible to state the original cost, the facts creating the impossibility shall be stated;

(c) The amount and kinds of stock, if any, which the applicant desires to issue, and, if preferred, the nature and extent of the preference; the amount of notes, bonds, or other evidences of indebtedness, if any, which the applicant desires to issue, with terms, rate of interest, and if and how to be secured;

(d) The use to be made of the proceeds of the issue of securities, notes, bonds, stocks, or other evidence of indebtedness with a statement indicating how much is to be used for the acquisition of property, the construction, completion, extension, or improvement of facilities, the improvement of service, the maintenance of service, and the discharge or refunding of obligations;

(e) The property in detail that is to be acquired, constructed, improved, or extended with its cost, a detailed description of the contemplated construction, completion, extension, or improvement of facilities established in a manner whereby an estimate of the cost may be made, a statement of the character of the improvement of service proposed, and of the reasons why the service should be maintained from its capital. If a contract has been made for the acquisition of property, or for construction, completion, extension, or improvement of facilities, or for the disposition of the securities, notes, bonds, stocks, or other evidence of indebtedness that it proposes to issue or the proceeds thereof and if a contract has been made, copies thereof shall be annexed to the application;

(f) If it is proposed to discharge or refund obligations, a statement of the nature and description of the obligations including their par value, the amount for which they were actually sold, the associated expenses, and the application of the proceeds from the sales. If notes are to be refunded, the application shall show the date, amount, time, rate of interest, and payee of each and the purpose for which their proceeds were expended; and

(g) If the applicant is a water district, a copy of the applicant's written notification to the state local debt officer regarding the proposed issuance.

(2) The following exhibits shall be filed with the application:

(a) Financial exhibit (see Section 12 of this administrative regulation);

(b) Copies of trust deeds or mortgages, if applicable, unless they have already been filed with the commission, in which case reference shall be made by case number to the proceeding in which the trust deeds or mortgages have been filed; and

(c) Maps and plans of the proposed property and constructions together with detailed estimates in a form that they can be reviewed by the commission's engineering division. Estimates shall be arranged according to the commission-prescribed uniform system of accounts for the various classes of utilities.

Section 19. Application for Declaratory Order. (1) The commission may, upon application by a person substantially affected, issue a declaratory order with respect to the jurisdiction of the commission, the applicability to a person, property, or state of

facts of an order or administrative regulation of the commission or provision of KRS Chapter 278, or with respect to the meaning and scope of an order or administrative regulation of the commission or provision of KRS Chapter 278.

(2) An application for declaratory order shall:

(a) Be in writing;

(b) Contain a complete, accurate, and concise statement of the facts upon which the application is based;

(c) Fully disclose the applicant's interest;

(d) Identify all statutes, administrative regulations, and orders to which the application relates; and

(e) State the applicant's proposed resolution or conclusion.

(3) The commission may direct that a copy of the application for a declaratory order be served on a person who may be affected by the application.

(4) Unless the commission orders otherwise, responses, if applicable, to an application for declaratory order shall be filed with the commission within twenty-one (21) days after the date on which the application was filed with the commission and shall be served upon the applicant.

(5) A reply to a response shall be filed with the commission within fourteen (14) days after service.

(6) Each application, response, and reply containing an allegation of fact shall be supported by affidavit or shall be verified.

(7) The commission may dispose of an application for a declaratory order solely on the basis of the written submissions filed.

(8) The commission may take any action necessary to ensure a complete record, to include holding oral arguments on the application and requiring the production of additional documents and materials, and may extend the time for the filing of a reply or response under this section.

Section 20. Formal Complaints. (1) Contents of complaint. Each complaint shall be headed "Before the Public Service Commission," shall establish the names of the complainant and the defendant, and shall state:

(a) The full name and post office address of the complainant;

(b) The full name and post office address of the defendant;

(c) Fully, clearly, and with reasonable certainty, the act or omission, of which complaint is made, with a reference, if practicable, to the law, order, or administrative regulation, of which a failure to comply is alleged, and other matters, or facts, if any, as necessary to acquaint the commission fully with the details of the alleged failure; and

(d) The relief sought.

(2) Signature. The complainant or his or her attorney, if applicable, shall sign the complaint. A complaint by a corporation, association, or another organization with the right to file a complaint, shall be signed by its attorney.

(3) Number of copies required. Upon the filing of an original complaint, the complainant shall also file two (2) more copies than the number of persons to be served.

(4) Procedure on filing of complaint.

(a) Upon the filing of a complaint, the commission shall immediately examine the complaint to ascertain if it establishes a prima facie case and conforms to this administrative regulation.

1. If the commission finds that the complaint does not establish a prima facie case or does not conform to this administrative regulation, the commission shall notify the complainant and provide the complainant an opportunity to amend the complaint within a specified time.

2. If the complaint is not amended within the time or the extension as the commission, for good cause shown, shall grant, the complaint shall be dismissed.

(b) If the complaint, either as originally filed or as amended, establishes a prima facie case and conforms to this administrative regulation, the commission shall serve an order upon the person complained of, accompanied by a copy of the complaint, directed to the person complained of and requiring that the matter complained of be satisfied, or that the complaint be answered in writing within ten (10) days from the date of service of the order, provided that the commission may require the answer to be filed

within a shorter period if the complaint involves an emergency situation or otherwise would be detrimental to the public interest.

(5) Satisfaction of the complaint. If the defendant desires to satisfy the complaint, he or she shall submit to the commission, within the time allowed for satisfaction or answer, a statement of the relief that the defendant is willing to give. Upon the acceptance of this offer by the complainant and with the approval of the commission, the case shall be dismissed.

(6) Answer to complaint. If the complainant is not satisfied with the relief offered, the defendant shall file an answer to the complaint within the time specified in the order or the extension as the commission, for good cause shown, shall grant.

(a) The answer shall contain a specific denial of the material allegations of the complaint as controverted by the defendant and also a statement of any new matters constituting a defense.

(b) If the defendant does not have information sufficient to answer an allegation of the complaint, the defendant may so state in the answer and place the denial upon that ground.

Section 21. Informal Complaints. (1) An informal complaint shall be made to the commission's division of consumer services in a manner that specifically states the complainant's concerns and identifies the utility.

(2) The commission's division of consumer services shall address by correspondence or other means the complaint.

(a) If an informal complaint is referred to a utility, the utility shall acknowledge to the commission's division of consumer services referral of the complaint and shall report on its efforts to contact the complainant within three (3) business days of the referral, or a lesser period if the complaint involves an emergency situation or otherwise would be detrimental to the public interest.

(b) If commission staff requires a period less than three (3) business days for a response, that period shall be reasonable under the circumstances.

(3) Upon resolution of the informal complaint, the utility shall notify the commission's division of consumer services.

(4) In the event of failure to bring about satisfaction of the complaint because of the inability of the parties to agree as to the facts involved, or from other causes, the proceeding shall be held to be without prejudice to the complainant's right to file and prosecute a formal complaint whereupon the informal proceedings shall be discontinued.

Section 22. Deviations from Rules. In special cases, for good cause shown, the commission may permit deviations from these rules.

Section 23. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "FERC Financial Report FERC Form No. 1", March 2007;

(b) "FERC Financial Report FERC Form No. 2", December 2007;

(c) "Notice of Election of Use of Electronic Filing Procedures", June 2014;

(d) "PSC Form-T (telephone)", August 2005;

(e) "Form 8-K", January 2012;

(f) "Form 10-K", January 2012;

(g) "Form 10-Q", January 2012; and

(h) "Subpoena Form", August 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at <http://psc.ky.gov>.

This is to certify that the Public Service Commission approved promulgation of this emergency administrative regulation, pursuant to KRS 278.040(3), on September 9, 2022.

LINDA BRIDWELL, P.E., Executive Director

KENT A. CHANDLER, Chairman

APPROVED BY AGENCY: September 9, 2022

FILED WITH LRC: September 14, 2022 at 11:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 25, 2022, at 9:00 a.m. eastern standard time at the Kentucky Public Service Commission, 211 Sower Boulevard, 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 and instructions on how to attend and participate virtually will be published on the commission's website at [psc.ky.gov](http://psc.ky.gov). Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through October 31, 2022. Written notification of intent to be heard at the public hearing and written comments on the proposed amendment should be sent or delivered to the contact person listed below.

CONTACT PERSON: John E.B. Pinney, Executive Advisor, Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 782-2587, mobile (502) 545-6180, fax (502) 564-7279, email [Jeb.Pinney@ky.gov](mailto:Jeb.Pinney@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John E.B. Pinney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the rules of procedures for the hearings and formal proceedings before the Public Service Commission.

(b) The necessity of this administrative regulation: This administrative regulation is needed to provide the structural framework for hearings and formal proceedings that the Public Service Commission

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 278.040(3) authorizes the Commission to adopt reasonable regulations to implement the provisions of KRS Chapter 278.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It sets forth the rules of procedure that utilities and the commission must follow.

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

(a) How the amendment will change this existing administrative regulation: The proposed emergency amendment will facilitate, by temporarily removing certain filing requirements, construction and repair of gas, water, and sewer infrastructure damaged by flooding in Eastern Kentucky in late July 2022.

(b) The necessity of the amendment to this administrative regulation: Currently if water, gas, and sewer utilities seek to begin large construction projects, they must apply for and receive a certificate of public convenience and necessity from the commission. The emergency amendment will temporarily suspend that requirement of seeking Public Service Commission approval for construction to replace infrastructure damaged by flooding.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 278.040(3) authorizes the Commission to adopt reasonable regulations to implement the provisions of KRS Chapter 278.

(d) How the amendment will assist in the effective administration of the statutes: The proposed emergency amendment will temporarily remove certain regulatory requirements with which water, gas, and sewer utilities must comply before beginning construction.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The regulation will affect regulated gas, water, and sewer utilities in Eastern Kentucky of which there are approximately 30.

(4) Provide an analysis of how the entities identified in question

(3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions. The proposed amendment will temporarily remove certain required actions

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Zero Dollars; no fiscal impact.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be fewer regulatory requirements prior to beginning construction to replace flood-damaged infrastructure.

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

(a) Initially: Zero Dollars; no fiscal impact.

(b) On a continuing basis: Zero Dollars; no fiscal impact.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The commission does not anticipate this amendment increasing its enforcement cost. The commission currently funds enforcement of this regulation through its general operating budget funded through annual assessments paid by regulated utilities pursuant to KRS 278.130, et. seq., and this amendment has no effect on that funding.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No new fees are established and existing fees will not be affected.

(9) TIERING: Is tiering applied? No

#### 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? May impact water districts formed under KRS Chapter 74.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 278.040

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Water districts, and combined water and sewer districts will forego the expense of applying to the Public Service Commission to receive approval for construction to replace damaged facilities.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Zero dollars; no additional revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Zero dollars; no additional revenue.

(c) How much will it cost to administer this program for the first year? Zero dollars.

(d) How much will it cost to administer this program for subsequent years? Zero dollars; the emergency amendment will not be replaced with an ordinary regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(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?

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Zero dollars

(c) How much will it cost the regulated entities for the first year? Zero dollars.

(d) How much will it cost the regulated entities for subsequent years? Zero dollars; the emergency amendment will not be replaced with an ordinary 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: the water, sewer, and gas utilities affected by this emergency amendment will forego the expenses associated with applying to the Public Service Commission for approval of construction to replace damaged facilities. Affected utilities will not have to pay for, inter alia, legal fees and costs of preparing applications.

(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 major economic impact.

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate: None.

(2) State compliance standards: N/A

(3) Minimum or uniform standards contained in the federal mandate: N/A

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A



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.

**FINANCE AND ADMINISTRATION CABINET  
Kentucky Retirement Systems  
(Emergency Amended After Comments)**

**105 KAR 1:415E. Reimbursement of hospital and medical insurance premiums for Medicare eligible retired members reemployed with a participating employer.**

EFFECTIVE: September 15, 2022

Prior versions:

New Emergency Administrative Regulation: 49 Ky.R.

243

RELATES TO: KRS 16.505, 61.505, 61.510, 61.701, 61.702, 78.510, 78.5536, 42 U.S.C. 1395y(b)

STATUTORY AUTHORITY: KRS 61.505(1)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852. KRS 61.702 and 78.5536 provide for the systems operated by the Kentucky Public Pensions Authority to offer group hospital and medical insurance coverage to retired members and some spouses and dependents. This administrative regulation establishes eligibility requirements, procedures, and necessary documentation and forms for the reimbursement of hospital and medical insurance benefit premiums paid by Medicare eligible retired members who were reemployed in a ~~[regular full-time]~~ position with a participating employer and were informed by the Kentucky Retirement Systems or the Kentucky Public Pensions Authority that they were not eligible for enrollment in an existing group hospital and medical insurance plan through the Kentucky Public Pensions Authority from January 1, 2009~~[March 1, 2017]~~ through September 30, 2022.

Section 1. Definitions.

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

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

(3) "Boards" means the Board of Trustees of the Kentucky Retirement Systems and the Board of Trustees of the County Employees Retirement System.

(4) "Complete" means all required sections of a form are filled out, the form has been fully executed by the recipient or the recipient's legal representative, and all supporting documentation required by the form is included with the form.

(5) "Eligible spouse and dependents" means spouses and dependent children of MEMs who are eligible to receive all or a portion of their premiums paid for by the Boards in accordance with KRS 61.702 and 78.5536.

(6) "File" means a form or document has been received at the retirement office by mail, fax, secure email, in-person delivery, or via Self Service on the Web site maintained by the agency (if available).

(7) "MEM" means:

(a) A Medicare eligible member who is retired and reemployed  
~~[in a regular full-time position]~~ with a participating employer

which offers or offered the member a hospital and medical insurance benefit, or by a participating employer which is or was prevented from offering a hospital and medical benefit to the member as a condition of reemployment under KRS 70.293, 95.022, or 164.952; and[-]

(b) A Medicare eligible member who is retired and whose spouse meets the following criteria:

1. The spouse is also a retired member,

2. The spouse is reemployed with a participating employer which offers the spouse a hospital and medical insurance benefit, or by a participating employer which is prevented from offering a hospital and medical benefit to the spouse as a condition of reemployment under KRS 70.293, 95.022, or 164.952.

3. The premium required to provide the spouse with hospital and medical insurance plan coverage is fully or partially paid based on the Medicare eligible retired member's benefits as provided in KRS 61.702(4) and 78.5536(4).

(8) "Monthly contribution rate" means:

(a) The amount determined by the boards as the maximum contribution the systems will pay toward the premium of a retired member who began participating in the systems on or before June 30, 2003; or

(b) For a retired member who began participating in the system on or after July 1, 2003, the amount per month earned by the retired member based on years of service as provided in KRS 61.702(4)(e) and 78.5536(4)(e).

(9) "Premium" means the monthly dollar amount required to provide hospital and medical insurance plan coverage for a recipient, spouse of a retired member, or dependent child.

(10) "Provide" when used in reference to a form or other document, means the agency makes a form or document available on its Web site (if appropriate) or makes a form or document available to a person by mail, fax, secure email, or via Self Service on the Web site maintained by the agency (if available).

(11) "Systems" means the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System.

Section 2. Group Hospital and Medical Insurance Plans Established for MEMs. Beginning October 1, 2022, a KEHP group hospital and medical insurance plan is available for MEMs and the eligible spouses and dependents of MEMs in accordance with KRS 61.702, 78.5536 and 42 U.S.C. 1395y(b).

Section 3. Eligibility for Reimbursement.

(1) A MEM, who was informed by the agency that he or she was not eligible for group hospital and medical insurance plan coverage through the systems, and who paid premiums for a group hospital and medical insurance plan for himself or herself as well as his or her eligible spouse and dependent(s) may request reimbursement for those premiums paid during the time period from January 1, 2009~~[March 1, 2017]~~ to September 30, 2022 as described in Section 4.

(a) MEMs are not eligible for reimbursement for any portion of premiums paid for themselves, spouses, and dependents on or after October 1, 2022, except as indicated in paragraph (b) of this subsection.

(b) For calendar year 2022 only, MEMs and eligible spouses and dependents of MEMs already enrolled in a hospital and medical insurance plan other than a KEHP group hospital and medical insurance plan may choose to remain on that plan through December 31, 2022 and have his or her reimbursement eligibility period extended to December 31, 2022.

(2) Payment of premiums for a group hospital and medical insurance plan for MEMs and eligible spouses and dependents of MEMs identified in subsection (1) of this Section shall be

reimbursed upon submission of documentation as described in Section 4 if all or a portion of the MEM, MEM's eligible spouse's or dependent's group hospital and medical insurance coverage would have been paid for by the Boards pursuant to KRS 61.702 and 78.5536.

(3) A MEM shall not be eligible for reimbursement of premiums paid by or on behalf of the MEM or his or her eligible spouse or dependent if:

(a) The MEM was not notified by the agency that he or she was ineligible for group hospital and medical insurance plan coverage through the agency, and

(b) The MEM voluntarily chose to purchase or enroll in a hospital and medical insurance plan not offered by the agency.

#### Section 4. Request for Reimbursement.

(1) The agency shall provide the Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, to eligible MEMs.

(2) A MEM may request reimbursement for himself or herself, eligible spouse or dependent(s) by filing Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, which shall include all premiums for the entire time period for which the MEM is requesting reimbursement.

(a) MEMs may begin filing Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, on August 1, 2022.

(b) MEMs shall only file one (1) Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, for each entity that provided hospital and medical insurance coverage for the MEM and his or her eligible spouses and dependents.

(c) Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement shall only be filed once MEMs and MEM's eligible spouse or dependents are no longer paying premiums eligible for reimbursement.

(3)(a) In order to receive the applicable reimbursement, MEMs must file the completed Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, with one (1) or more of the following proof of payment of premiums for hospital and medical insurance coverage that covers the entire time period for the requested reimbursement:

1. The employer certification of health insurance for medical reimbursement section of Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, completed by an employer to certify premiums paid by the MEM;

2. The insurance agent certification of health insurance for medical reimbursement section of Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, completed by an insurance agency or company to certify the premiums paid by or on behalf of the MEM;

3. A signed statement from the MEM's employer listing dates of hospital and medical insurance coverage amount of premiums deducted from wages and the cost of the single coverage; or

4. A signed statement or invoice from the MEM's insurance company listing the dates and cost of single hospital and medical insurance coverage, along with proof of payment such as a receipt or bank statement clearly indicating payment for the statement or invoice provided.

(b) If any provided documentation is deemed insufficient by the agency, the agency may request additional proof of medical and hospital insurance coverage or payment.

(4)(a) A completed Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, must be filed no later than June 30, 2023.

(b) MEMs and eligible spouses or dependents of MEMs for whom a completed Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, is not on file on or before June 30, 2023 are not eligible for reimbursement, except as provided by subsection (5) of this section.

(5)(a) If a MEM submits a Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, by the deadline indicated in subsection (4) of this Section that is not complete, then the MEM shall have until December 31, 2023 to file

a completed Form 6260, including any documentation or proof of payments for the time period the MEM is requesting reimbursement that were missing from the initial incomplete Form 6260.

(b) MEMs and eligible spouses or dependents of MEMs for whom a completed Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, is not on file on or before December 31, 2023 are not eligible for reimbursement.

(6)(a) If a MEM is deceased, the executor, administrator, or other representative of the MEM's estate may request reimbursement for the MEM, and any eligible spouse or dependents by filing a Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, and all other required documentation at the retirement office in compliance with this Section.

(b) The executor, administrator, or other representative of the MEM's estate shall also file an order appointing the executor, administrator, or other representative of the MEM's estate from a court with jurisdiction that has been entered by the Clerk of the Court or certified by the Clerk of the Court.

(7) If the last day to file a completed Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, under this section is a Saturday, Sunday, a public holiday listed in KRS 2.110, a day on which the retirement office is actually and legally closed, or any other state or federal holiday that disrupts mail service, then the deadline shall be satisfied if the completed Form 6260 is on file by the end of the next business day.

Section 5. Funding. Pursuant to KRS 61.701, fund assets shall be dedicated for use toward health benefits, as provided in KRS 61.702 and 78.5536, and as permitted under 26 U.S.C. 105 and 106 of the United States Internal Revenue Code, to retired recipients and employees of employers participating in the systems, including MEMs. Fund assets shall also be dedicated for use toward eligible spouses and dependents of MEMs health benefits as provided in KRS 61.702 and 78.5536. Fund assets shall be used to reimburse eligible MEMs and eligible spouses and dependents of the MEM.

#### Section 6. Authorized Payments.

(1) The agency shall reimburse premiums paid by a MEM or the spouse of a MEM for a MEM who meets the eligibility requirements of Section 3 of this administrative regulation and the MEM's eligible spouse and dependents for each month between January 1, 2009~~March 1, 2017~~ and September 30, 2022, except as provided in subsection (2) of this section:

(a) That are included on a timely-submitted, completed Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, in compliance with Section 4; and

(b) Where documented proof of payment of premiums was filed in compliance with Section 4.

(2) In the case of MEMs who choose to remain on their current hospital and medical insurance plan through December 31, 2022 in accordance with paragraph (1)(b) of Section 3 of this administrative regulation, the agency shall reimburse premiums paid by a MEM or the spouse of a MEM for a MEM who meets the eligibility requirements of Section 3 of this administrative regulation and the MEM's eligible spouse and dependents for each month between January 1, 2009~~March 1, 2017~~ and December 31, 2022:

(a) That are included on a timely-submitted, completed Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, in compliance with Section 4; and

(b) Where documented proof of payment of premiums was filed in compliance with Section 4.

(3) The amount the MEM or the estate of the MEM shall receive for each month of premium reimbursements authorized by subsection (1) or (2) of this section shall be the lesser of:

(a) The monthly contribution rate in effect during the calendar year in which the premiums authorized for reimbursement were paid by the MEM or the spouse of the MEM had the MEM been eligible to enroll in the non-Medicare eligible group hospital and medical insurance plan established in accordance with KRS

61.702 and 78.5536, or

(b) The premiums paid by the MEM or the spouse of the MEM for hospital and medical insurance coverage for the MEM and his or her eligible spouse and dependents.

(4)(a) The applicable monthly contribution rate referenced in paragraph (3)(a) of this section shall be based on the MEM's hazardous and nonhazardous service.

(b) The applicable monthly contribution rate referenced in paragraph (3)(a) of this Section shall not include the tobacco usage fee for the non-Medicare eligible group hospital and medical insurance plan.

(5)(a) If a MEM or an estate of a MEM receives a payment from the agency that does not qualify for reimbursement in accordance with this administrative regulation, the MEM shall return the payment to the agency at the retirement office.

(b) If the MEM or an estate of a MEM fails to return the payment, the agency may withhold payment from the MEM's monthly retirement allowance payment or take other action to collect on the payment received in error.

Section 7. Incorporated by Reference. (1) Form 6260, "Medicare Secondary Payer Application for Medical Insurance Reimbursement", September~~May~~ 2022, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8:00 a.m. to 4:30 p.m. This material is also available on the agency's Web site at kyret.ky.gov.

DAVID L. EAGER, Executive Director

APPROVED BY AGENCY:

FILED WITH LRC: September 15, 2022 at 10:20 a.m.

CONTACT PERSON: Jessica Beaubien, Policy Specialist, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8570, fax (502) 696-8615, email Legal.NonAdvocacy@kyret.ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jessica Beaubien

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes eligibility requirements, procedures, and necessary documentation and forms for the reimbursement of hospital and medical insurance benefit premiums paid by Medicare eligible retired members who were reemployed in a position with a participating employer and were informed by the Kentucky Retirement Systems or the Kentucky Public Pensions Authority that they were not eligible for enrollment in an existing group hospital and medical insurance plan through the Kentucky Public Pensions Authority from January 1, 2009 through September 30, 2022.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish eligibility requirements, procedures, and necessary documentation and forms for the reimbursement of hospital and medical insurance benefit premiums paid by Medicare eligible retired members who were reemployed in position with a participating employer and were informed by the Kentucky Retirement Systems or the Kentucky Public Pensions Authority that they were not eligible for enrollment in an existing group hospital and medical insurance plan through the Kentucky Public Pensions Authority from January 1, 2009 through September 30, 2022.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852. KRS 61.702 and 78.5536 provide for the systems operated by the Kentucky Public Pensions Authority to offer group hospital and medical insurance coverage to retired members and some

spouses and dependents. This administrative regulation establishes eligibility requirements and procedures for reimbursements of premiums paid by Medicare eligible retired members who are or were reemployed in a regular position with a participating employer during the period of January 1, 2009 through September 30, 2022, when a group hospital and medical insurance plan was not available for these retired members or their eligible spouses and dependents.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing eligibility requirements, procedures, and necessary documentation and forms for the reimbursement of hospital and medical insurance benefit premiums paid by Medicare eligible retired members who were reemployed in a position with a participating employer and were previously informed by the Kentucky Retirement Systems or the Kentucky Public Pensions Authority that they were not eligible for enrollment in an existing group hospital and medical insurance plan through the Kentucky Public Pensions Authority from January 1, 2009 through September 30, 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: This is a new administrative regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 1,100 individuals who are retired members of the systems operated by the Kentucky Public Pensions Authority. An unknown number of spouses and dependents of retired members of the systems operated by the Kentucky Public Pensions Authority. One (1) entity that provides day-to-day operations for the three (3) public retirement systems: the Kentucky Public Pensions Authority. Three (3) public retirement systems: the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Kentucky Public Pensions Authority is required to set-up an internal system for processing and paying the eligible reimbursement requests provided by this administrative regulation. The Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System will be responsible for paying for the eligible reimbursements from the Kentucky Retirement Systems insurance trust fund (KRS 61.702).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of compliance for the Kentucky Public Pensions Authority consists solely of the costs associated with implementation of this administrative regulation, which should be minimal. The cost of compliance for the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System is unknown because the cost will be dependent on several factors that are unknown at the time of filing of this administrative regulation: (i) the number of eligible retired members who timely request reimbursement in accordance with this administrative regulation, (ii) the periods during which the affected retired members paid for premiums, and (iii) whether the affected retired members may have had their premiums partially or entirely paid for by an employer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Kentucky Public Pensions Authority, the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System are able to ensure legal compliance.

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

(a) Initially: The costs associated with the implementation of this administrative regulation should be minimal.

(b) On a continuing basis: The continuing costs associated with the implementation of this administrative regulation should be minimal, particularly after the window for requesting reimbursement closes on June 30, 2023.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the Kentucky Public Pensions Authority, which will carry out the implementation and enforcement of this regulation pursuant to KRS 61.505, are paid from the Retirement Allowance Account (trust and agency funds).

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All affected public retirement systems are treated in the same manner by this administrative regulation.

#### 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 Public Pensions Authority and the three (3) public retirement systems for which it provides day-to-day operations: the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.505(1)(g).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? Unknown.

(d) How much will it cost to administer this program for subsequent years? Unknown.

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

Revenues (+/-): None.

Expenditures (+/-): Unknown.

Other Explanation: The cost of compliance for the Kentucky Public Pensions Authority consists solely of the costs associated with implementation of this administrative regulation, which should be minimal. The cost of compliance for the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System is unknown because the cost will be dependent on several factors that are unknown at the time of filing of this administrative regulation: (i) the number of

eligible retired members who timely request reimbursement in accordance with this administrative regulation, (ii) the periods during which the affected retired members paid for premiums, and (iii) whether the affected retired members may have had their premiums partially or entirely paid for by an employer.

(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.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? None.

(c) How much will it cost the regulated entities for the first year? Unknown.

(d) How much will it cost the regulated entities for subsequent years? Unknown.

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 (+/-): Unknown.

Other Explanation: The cost of compliance for the Kentucky Public Pensions Authority consists solely of the costs associated with implementation of this administrative regulation, which should be minimal. The cost of compliance for the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System is unknown because the cost will be dependent on several factors that are unknown at the time of filing of this administrative regulation: (i) the number of eligible retired members who timely request reimbursement in accordance with this administrative regulation, (ii) the periods during which the affected retired members paid for premiums, and (iii) whether the affected retired members may have had their premiums partially or entirely paid for by an employer.

(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" because it will not have a negative or adverse economic impact on the Kentucky Public Pensions Authority or the three (3) public retirement systems for which it provides day-to-day operations (the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System).

#### KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM

##### Kentucky Board of Emergency Medical Services (Emergency As Amended at ARRS, September 13, 2022)

#### 202 KAR 7:701E. Scope of practice matters.

EFFECTIVE: September 13, 2022

Prior effective versions:

Emergency Amendment: 49 Ky.R. 272

RELATES TO: KRS 39A.050, 311A.135, 311A.140, 311A.160, 311A.165, 311A.170, 311A.175

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030, 311A.135, 311A.140, 311A.160, 311A.165, 311A.170

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.025, 311A.030, 311A.135, 311A.140, 311A.160, 311A.165, and 311A.170 require the board to promulgate administrative regulations relating to the scope of practice for individuals certified or licensed by the board. This administrative regulation establishes the scope of practice.

Section 1. Emergency Medical Responder. (1) In addition to the skills and procedures established in the current National

Highway Traffic Safety Administration National EMS Scope of Practice Model, emergency medical responders certified by the board shall be eligible to perform the supplemental procedures:

- (a) Cervical spine and spinal immobilization; and
- (b) Administration of Naloxone via Nasal Atomization Devices.

(2) To be eligible to perform a supplemental procedure established in subsection (1) of this section, an emergency medical responder shall have been trained and educated utilizing:

(a) Kentucky Required Mandatory Supplemental Curriculum: EMR Spinal Immobilization (KBEMS-E-34); and

(b) Kentucky Required Mandatory Supplemental Curriculum for the EMR in the Administration of Naloxone using a Nasal Atomization Device (KBEMS-E-33).

(3) An out-of-state emergency medical responder may perform any skill or procedure that the emergency medical responder may use in the state in which the emergency medical responder is certified subject to the emergency medical responder being called upon to assist in providing medical and related care during a disaster or emergency pursuant to KRS 39A.050, the Emergency Management Assistance Compact, or an agreement made pursuant to KRS Chapter 39A.

(4) (a) An emergency medical responder shall adhere to the protocols established by KRS Chapter 311A and 202 KAR Chapter 7. Deviation from these protocols shall only occur if:

- 1. The emergency medical responder's medical director or designated on-line medical direction orders otherwise;
- 2. Compliance with approved protocols is not in the patient's medical best interest; or
- 3. The emergency medical responder does not have the equipment or medication to adhere to the protocol.

(b) Any deviation from an approved protocol shall be documented in the Patient Care Report (PCR) established in 202 KAR 7:540.

Section 2. Emergency Medical Technician (EMT). (1) In addition to the skills and procedures established in the current National Highway Traffic Safety Administration National EMS Scope of Practice Model, an EMT certified by the board shall be eligible to perform the supplemental procedures:

(a) Identification of correct placement of an endotracheal tube (ETT) placed by a licensed paramedic, including the use of end tidal CO2 monitoring (EtCO2);

(b) Securing of an endotracheal tube that has been inserted by appropriately licensed personnel;

(c) The use of Blind Insertion Airway Devices (BIADs);

(d) Utilizing a cardiac monitor and troubleshooting potential problems;

(e) Selecting and applying cardiac electrodes;

(f) Non-interpretive acquisition and transmission of a 12-Lead Electrocardiogram (ECG);

(g) Appropriate utilization of equipment and sampling of blood glucose using a glucometer;

(h) Care for a saline lock site where a catheter has been dislodged;

(i) Administration of Epinephrine for anaphylaxis;

(j) Administration of Naloxone using a Nasal Atomization Device; and

(k) Administration of Albuterol using a Nebulizer.

(2) To be eligible to perform each of the supplemental procedures, an EMT shall have been trained and educated utilizing:

(a) Kentucky Required Mandatory Supplemental Curriculum for the EMT in Advanced Airway Management: Monitoring & Securing an ETT (KBEMS-E-38);

(b) Kentucky Required Mandatory Supplemental Curriculum for the Emergency Medical Technician (EMT) Using a Noninvasive Monitoring Device - Application of Electrocardiogram Electrodes, Use of a Cardiac Monitor, and Acquisition and Transmission of a 12-Lead ECG (KBEMS-E-35);

(c) Kentucky Required Mandatory Supplemental Curriculum for the Emergency Medical Technician (EMT): Training in the Monitoring, Maintaining, and Discontinuing of Pre-established Patient Intravenous Infusions in Prehospital, Interfacility, and

Facility-to-Home Encounters (KBEMS-E-40);

(d) Kentucky Required Mandatory Supplemental Curriculum for the Emergency Medical Technician (EMT) Using a Noninvasive Monitoring Device - Application of End-tidal Carbon Dioxide Monitoring (KBEMS-E-39);

(e) Kentucky Required Mandatory Supplemental Curriculum for the EMT in the Administration of Naloxone Using a Nasal Atomization Device (KBEMS-E-36);

(f) Kentucky Required Mandatory Supplemental Curriculum for the EMT in Advanced Airway Management: Blindly Inserted Airway Devices (BIADs) (KBEMS-E-37);

(g) Kentucky Required Mandatory Supplemental Curriculum for the EMT: Sampling of Blood Glucose Using a Glucometer (KBEMS-E-41);

(h) Kentucky Required Mandatory Supplemental Curriculum: Administration of Epinephrine (KBEMS-E-42); and

(i) Kentucky Required Mandatory Supplemental Curriculum: Administration of Albuterol using a Nebulizer (KBEMS-E-43).

(3) An EMT shall adhere to the protocols established by KRS Chapter 311A and 202 KAR Chapter 7. Deviation from these protocols shall only occur if:

(a) The medical director or designated on-line medical direction orders otherwise;

(b) Compliance is not in the medical best interest of the patient; or

(c) The EMT does not have the equipment or medication to adhere to the protocol.

(4) Any deviation from an approved protocol shall be documented in the Patient Care Report (PCR) established in 202 KAR 7:540.

(5) An out-of-state EMT may perform any skill or procedure that the EMT may use in the state in which the EMT is certified subject to the EMT being called upon to assist in providing medical and related care during a disaster or emergency pursuant to KRS 39A.050, the Emergency Management Assistance Compact, or an agreement made pursuant to KRS Chapter 39A.

Section 3. EMT Students. (1) During the didactic, laboratory, and clinical portions of an EMT course, an EMT student may perform any skill or procedure, or administer any medication within the scope of practice for an EMT as established by this administrative regulation, if the student:

(a) Has been trained and educated to perform the skill or procedure, or to administer the medication; and

(b) Is permitted to perform the skill or procedure in writing or by direct order of the medical director of the EMT course.

(2) During a field internship, an EMT student may perform any skill or procedure, or administer any medication within the scope of practice for an EMT as established by this administrative regulation, if:

(a) The student has written authorization by the medical director of the EMT course to perform the skill or procedure;

(b) Authorization to perform the skill or procedure is filed with the coordinator of the EMT course; and

(c) The medical director of the EMT course and the director of the agency for whom the skill or procedure is performed each give written permission to the EMT student to participate in a field internship with the agency.

(3) This administrative regulation shall not be construed to allow an emergency medical responder student or EMT student, ~~AEMT student, or paramedic student~~ to perform any skill or procedure without direct supervision by a physician, registered nurse, ~~or~~ paramedic, AEMT, or EMT, any of whom shall be licensed or certified in the Commonwealth of Kentucky, except for out-of-state clinical or field rotations specifically approved by the board.

Section 4. Advanced Emergency Medical Technician (AEMT).

(1) An AEMT shall provide emergency medical services consistent with the current National Highway Traffic Safety Administration National EMS Scope of Practice Model.

(2) In addition to the skills and procedures in the National EMS Scope of Practice Model, the scope of practice of a Kentucky

AEMT shall include the supplemental procedures:

- (a) Quantitative and qualitative capnography and capnometry;
  - (b) Bi-level Positive Airway Pressure and Continuous Positive Airway Pressure (BiPAP/CPAP) devices; and
  - (c) Establishing and maintaining an adult intraosseous infusion.
- (3) To be eligible to perform each of the supplemental procedures, an AEMT shall have been trained and educated utilizing:

(a) Kentucky Required Mandatory Supplemental Curriculum for the AEMT Using a Noninvasive Monitoring Device - Application and Interpretation of Quantitative Capnography and End Tidal Carbon Dioxide Monitoring (KBEMS-E30);

(b) Kentucky Required Mandatory Supplemental Curriculum for the AEMT - Intraosseous Infusion in the Adult (KBEMS-E-31); and

(c) Kentucky Required Mandatory Supplemental Curriculum for the AEMT Using Bi-level Positive Airway Pressure and Continuous Positive Airway Pressure Devices (KBEMS-E-32).

(4) (a) An AEMT shall adhere to the protocols established by KRS Chapter 311A and 202 KAR Chapter 7. Deviation from these protocols shall only occur if:

- 1. The AEMT's medical director or designated on-line medical direction orders otherwise;
- 2. Compliance with approved protocols is not in the patient's medical best interest; or
- 3. The AEMT does not have the equipment or medication to adhere to the protocol.

(b) Any deviation from an approved protocol shall be documented in the Patient Care Report (PCR) established in 202 KAR 7:540.

(5) If providing emergency medical services during a disaster or emergency that qualifies as part of the Emergency Management Assistance Compact pursuant to KRS 39A.050, or if acting pursuant to another agreement made pursuant to KRS Chapter 39, an AEMT certified in another state may perform the skills and procedures approved by the certifying state.

Section 5. AEMT Students. (1) During the didactic, laboratory, and clinical portions of an AEMT course, an AEMT student may perform any skill or procedure, or administer any medication within the scope of practice for an AEMT, as defined by this administrative regulation, if the student:

- (a) Has been trained and educated to perform the skill or procedure, or to administer the medication; and
- (b) Is permitted to perform the skill or procedure in writing or by direct order of the medical director of the AEMT course.

(2) During a field internship, an AEMT student may perform any skill or procedure, or administer any medication within the scope of practice for an AEMT, as established by this administrative regulation, if:

(a) The student has written authorization by the medical director of the AEMT course to perform the skill or procedure;

(b) Authorization to perform the skill or procedure is filed with the coordinator of the AEMT course; and

(c) The medical director of the AEMT course and the director of the agency for whom the skill or procedure is performed each give written permission to the AEMT student to participate in a field internship with the agency.

(3) This administrative regulation shall not be construed to allow an ~~[emergency medical responder student, EMT student, AEMT student, or paramedic student]~~ to perform any skill or procedure without direct supervision by a physician, registered nurse, ~~[or] paramedic, or AEMT~~, any of whom shall be licensed or certified in the Commonwealth of Kentucky, except for out-of-state clinical or field rotations specifically approved by the board.

Section 6. Paramedic. (1) A paramedic may perform any of the skills and procedures consistent with the current National Highway Traffic Safety Administration National EMS Scope of Practice Model.

(2) A paramedic shall adhere to the protocols established by KRS Chapter 311A and 202 KAR Chapter 7. Deviation from these protocols shall only occur if:

- (a) The medical director or designated on-line medical direction

orders otherwise;

- (b) Compliance is not in the medical best interest of the patient; or

(c) The paramedic does not have the equipment or medication to adhere to the protocol.

(3) Any deviation from an approved protocol shall be documented in the Patient Care Report (PCR) established in 202 KAR 7:540.

(4) (a) A paramedic functioning in a position of employment may perform any procedure or administer medications authorized by KRS 311A.170 or this administrative regulation, at any location within the Commonwealth subject to the written approval of, and limitations established by the paramedic's medical director and the paramedic's employer.

(b) A paramedic performing skills or procedures outside of the normal response area for the paramedic shall accompany and assist with or continue treatment for the patient until the patient is accepted by a receiving hospital, an ALS ground or licensed ALS air ambulance provider, or care is transferred to another licensed paramedic, receiving facility RN, advanced practice registered nurse (APRN), licensed physician's assistant, or physician.

(5)(a)1. An off-duty paramedic may perform any procedure or administer medications authorized by KRS 311A.170 or this administrative regulation, at any location within the Commonwealth subject to the written approval of, and limitations established by the paramedic's medical director and, if appropriate, the paramedic's employer; or

2. The paramedic may render care subject to the limitations of the paramedic's scope of practice at any location, if ordered to do so by a duly licensed physician.

(b) A paramedic performing skills or procedures outside of the normal response area for the paramedic shall accompany and assist with or continue treatment for the patient until the patient is accepted by a receiving hospital, an ALS ground or licensed ALS air ambulance provider, or care is transferred to another licensed paramedic, hospital emergency department, RN, advanced practice registered nurse (APRN), licensed physician's assistant, or physician.

(6) An out-of-state paramedic may perform any skill, procedure, or administer any medications that the paramedic may use in the state in which the paramedic is certified or licensed, subject to the control of the out-of-state paramedic's medical director or protocols and only in the following circumstances:

(a) An out-of-state paramedic is transporting a patient from out-of-state to a Kentucky medical facility or other location in Kentucky;

(b) An out-of-state paramedic is transporting a patient from out of state through Kentucky to another location out of state; or

(c) An out-of-state paramedic is called upon to assist in providing medical and related care during a disaster or emergency pursuant to KRS 39A.050, the Emergency Management Assistance Compact, or an agreement made pursuant to KRS Chapter 39A.

(7) A paramedic with a critical care endorsement shall be authorized to perform the skills and procedures included in the paramedic's education and training subject to authorization by the medical director through established protocols in accordance with KRS Chapter 311A and 202 KAR Chapter 7.

Section 7. Paramedic Hospital Scope of Practice. (1) Paramedics functioning in the hospital environment shall perform within the scope of practice, as established in this administrative regulation.

(2) Employment of paramedics in hospital emergency department settings, exclusive of employment by air or ground transport components, or both, owned or operated by the hospital, shall be subject to demonstrating knowledge based and clinical competencies at a level satisfactory to the employing hospital and subject to KRS Chapter 311A and 202 KAR Chapter 7.

(3) An employer shall not require practice for a paramedic that exceeds the defined scope of practice established by KRS Chapter 311A and 202 KAR Chapter 7. The paramedic shall inform the employing institution or supervising staff of any inability or limitation to perform an ordered skill or procedure based upon:

(a) A lack of knowledge of or training or education in the procedure or skill; or

(b) The order or directive exceeding the paramedic's scope of practice.

(4) An employer may provide education or educational opportunities to expand the documented clinical practice of the paramedic but shall not do so with the intent of requiring the paramedic to perform skills or procedures exceeding the scope of practice established by KRS Chapter 311A and 202 KAR Chapter 7 while in the hospital's employ.

(5) A paramedic shall:

(a) Maintain strict patient confidentiality;

(b) Provide and assure continuity of care to patients;

(c) Be a patient advocate;

(d) Follow the hospital's chain of command;

(e) Be knowledgeable and function within the scope of practice of a paramedic;

(f) Be clearly identified as a licensed paramedic while functioning in the hospital's employ;

(g) Document on patient care records all interventions, treatments, and assessments performed by the paramedic;

(h) Perform patient assessment, which may include triage; and

(i) Institute appropriate therapy in the care of patients subject to the limitation of existing protocols.

Section 8. Paramedic Students. (1) During the didactic, laboratory, and clinical portions of a paramedic course, a paramedic student may perform any skill or procedure, or administer any medication within the scope of practice for a paramedic as established by this administrative regulation, if the student:

(a) Has been trained and educated to perform the skill or procedure or administer the medication; and

(b) Is permitted to perform the skill or procedure in writing or by direct order of the medical director of the paramedic course.

(2) During the field internship, a paramedic student may perform any skill or procedure, or administer any medication within the scope of practice for a paramedic as established by this administrative regulation, if:

(a) The student has written authorization by the medical director of the paramedic course to perform the skill or procedure;

(b) The permission is filed with the paramedic course coordinator of the paramedic course; and

(c) The medical director and director of the ambulance service each give written permission to the paramedic student to participate in a field internship with the ambulance service.

(3) This administrative regulation shall not be construed to allow ~~a[n emergency medical responder student, EMT student, AEMT student, or]~~ paramedic student to perform any skill or procedure without direct supervision by a physician, registered nurse, or paramedic, any of whom shall be licensed or certified in the Commonwealth of Kentucky, except for out-of-state clinical or field rotations specifically approved by the board.

Section 9. Restriction of Practice. This administrative regulation shall not prohibit a medical director from restricting the scope of practice of any emergency medical responder, EMT, AEMT, or paramedic under the medical director's authority through established protocols.

Section 10. Exemptions. This administrative regulation shall not prohibit an emergency medical responder, emergency medical technician, advanced emergency medical technician, or paramedic certified or licensed in another state or registered with the NREMT from functioning in accordance with the scope of practice established in KRS Chapter 311A and 202 KAR Chapter 7 while assisting with mass casualties, weapons of mass destruction, or disaster incidents.

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

(a) "Kentucky Required Mandatory Supplemental Curriculum for the AEMT Using a Noninvasive Monitoring Device - Application

and Interpretation of Quantitative Capnography and End Tidal Carbon Dioxide Monitoring", KBEMS-E-30, February 2007;

(b) "Kentucky Required Mandatory Supplemental Curriculum for the AEMT Intraosseous Infusion in the Adult", KBEMS-E-31, February 2007;

(c) "Kentucky Required Mandatory Supplemental Curriculum for the AEMT using Bi-level Positive Airway Pressure and Continuous Positive Airway Pressure Devices", KBEMS-E-32, February 2007;

(d) "Kentucky Required Mandatory Supplemental Curriculum for the EMR in the Administration of Naloxone Using a Nasal Atomization Device", KBEMS-E-33, February 2007;

(e) "Kentucky Required Mandatory Supplemental Curriculum: EMR Spinal Immobilization", KBEMS-E-34, February 2007;

(f) "Kentucky Required Mandatory Supplemental Curriculum for the Emergency Medical Technician (EMT) Using a Noninvasive Monitoring Device - Application of Electrocardiogram Electrodes, Use of a Cardiac Monitor, and Acquisition and Transmission of a 12-Lead ECG", KBEMS-E-35, February 2007;

(g) "Kentucky Required Mandatory Supplemental Curriculum for the EMT in the Administration of Naloxone Using a Nasal Atomization Device", KBEMS-E-36, February 2007;

(h) "Kentucky Required Mandatory Supplemental Curriculum for the EMT in Advanced Airway Management: Blindly Inserted Airway Devices (BIADs)", KBEMS-E-37, February 2007;

(i) "Kentucky Required Mandatory Supplemental Curriculum for the EMT in Advanced Airway Management: Monitoring & Securing an ETT", KBEMS-E-38, February 2007;

(j) "Kentucky Required Mandatory Supplemental Curriculum for the Emergency Medical Technician (EMT) Using a Noninvasive Monitoring Device - Application of End-Tidal Carbon Dioxide Monitoring", KBEMS-E-39, February 2007;

(k) "Kentucky Required Mandatory Supplemental Curriculum for Emergency Medical Technician (EMT): Training in the Monitoring, Maintaining, and Discontinuing of Pre-established Patient Intravenous Infusions in Prehospital, Interfacility, and Facility-to-Home Encounters", KBEMS-E-40, February 2007;

(l) "Kentucky Required Mandatory Supplemental Curriculum for the EMT: Sampling of Blood Glucose Using a Glucometer", KBEMS-E-41, February 2007;

(m) "Kentucky Required Mandatory Supplemental Curriculum: Administration of Epinephrine", KBEMS-E-42, February 2007;

(n) "Kentucky Required Mandatory Supplemental Curriculum: Administration of Albuterol Using a Nebulizer", KBEMS-E-43, February 2007; and

(o) "National Highway Traffic Safety Administration National EMS Scope of Practice Model", February 2007.

(2) This material may be inspected, obtained, or copied, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 2464 Fortune Drive, Suite 195, Lexington, Kentucky 40509[118 James Court, Suite 50, Lexington, Kentucky 40565], Monday through Friday, 8 a.m. to 4:30 p.m. **This material is also available on the agency's Web site at <https://kbems.kctcs.edu/about/forms.aspx>.**

CONTACT PERSON: John K. Wood, counsel for the Kentucky Board of Emergency Medical Services, 163 East Main Street, Suite 200, Lexington, Kentucky 40507, phone (859) 225-4714, email [administrativeregulations@wgmfirm.com](mailto:administrativeregulations@wgmfirm.com).

**LABOR CABINET**  
**Department of Workers' Claims**  
**(Emergency As Amended at ARRS, September 13, 2022)**

**803 KAR 25:089E. Workers' compensation medical fee schedule for physicians.**

EFFECTIVE: September 13, 2022

Prior versions -

Emergency Amendment: 49 Ky.R. 284

RELATES TO: KRS 342.0011(32), 342.019, 342.020, 342.035

STATUTORY AUTHORITY: KRS 342.020, 342.035(1), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.035(1) requires the commissioner of the Department of Workers' Claims to promulgate administrative regulations to ensure that all fees, charges, and reimbursements for medical services under KRS Chapter 342 are limited to charges that are fair, current, and reasonable for similar treatment of injured persons in the same community for like services, where treatment is paid for by general health insurers. KRS 342.035(4) requires the commissioner to promulgate an administrative regulation establishing the workers' compensation medical fee schedule for physicians. Pursuant to KRS 342.035, a schedule of fees is to be reviewed and updated, if appropriate, every two (2) years on July 1. This administrative regulation establishes the medical fee schedule for physicians.

#### Section 1. Definitions.

(1) "Medical fee schedule" means the 2022 Kentucky Workers' Compensation Schedule of Fees for Physicians[2020–Kentucky Workers' Compensation Schedule of Fees for Physicians].

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

#### Section 2. Services Covered.

(1) The medical fee schedule shall govern all medical services provided to injured employees by physicians under KRS Chapter 342.

(2) The medical fee schedule shall also apply to other health care or medical services providers to whom a listed CPT code is applicable unless:

(a) Another fee schedule of the Department of Workers' Claims applies;

(b) A lower fee is required by KRS 342.035 or a managed care plan approved by the commissioner pursuant to 803 KAR 25:110; or

(c) An insurance carrier, self-insured group, or self-insured employer has an agreement with a physician, medical bill vendor, or other medical provider to provide reimbursement of a medical bill at an amount lower than the medical fee schedule.

#### Section 3. Fee Computation.

(1) The appropriate fee for a procedure or item covered by the medical fee schedule shall be the Maximum Allowable Reimbursement (MAR) listed in the 2022[2020] Kentucky Workers' Compensation Schedule of Fees for Physicians for those procedures or items for which a specific monetary amount is listed.

(2) Procedures Listed Without Specified Maximum Allowable Reimbursement Monetary Amount: The appropriate fee for a procedure or item for which no specific monetary amount is listed shall be determined and calculated in accordance with numerical paragraph six (6) of the General Instructions of the medical fee schedule unless more specific Ground Rules are applicable to that service or item, in which case the fee shall be calculated in accordance with the applicable Ground Rules.

(3) The resulting fee shall be the maximum fee allowed for the service provided.

Section 4.(1) A physician or healthcare or medical services provider located outside the boundaries of Kentucky shall be deemed to have agreed to be subject to this administrative regulation if it treats a patient who is covered under KRS Chapter 342.

(2) Pursuant to KRS 342.035, medical fees due to an out-of-state physician or healthcare or medical services provider shall be calculated under the fee schedule in the same manner as for an in-state physician.

#### Section 5. Incorporation by Reference.

(1) "2022 Kentucky Workers' Compensation Schedule of Fees for Physicians", July 1, 2022 Edition["2020–Kentucky Workers' Compensation Schedule of Fees for Physicians", July 1, 2020 Edition], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workers' Claims, Mayo-Underwood Building 3rd Floor, 500 Mero Street,

Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

**(3) This material may also be obtained from or through [https://labor.ky.gov/comp/Pages/Medical-Services.aspx#Physician\\_Fee\\_Schedule](https://labor.ky.gov/comp/Pages/Medical-Services.aspx#Physician_Fee_Schedule).**

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) 564-0681, email Dale.Hamblin@ky.gov.

### CABINET FOR HEALTH AND FAMILY SERVICES

#### Department for Public Health

#### Division of Epidemiology and Health Planning (Emergency Amended After Comments)

### 901 KAR 5:120E. Abortion reporting.

EFFECTIVE: September 13, 2022

Prior versions:

Emergency Amendment: 49 Ky.R. 286

RELATES TO: KRS 213.101, 213.106, 311.595, 311.720, 311.774, 311.781, 311.782, 311.783

STATUTORY AUTHORITY: KRS 194A.050(1), 213.021, 213.101(1), (7), 2022 Ky. Acts ch. 210

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet. KRS 213.101(1) requires each abortion that occurs in the commonwealth to be reported to the Office of Vital Statistics. KRS 213.101(7) requires the Office of Vital Statistics to promulgate administrative regulations to assist in compliance with that statute. 2022 Ky. Act ch. 210 expanded the abortion reporting requirements to include the full name and address of the physician and facility, the age of the father, if known, the Rh negative status of the patient, if the patient was treated for a sexually transmitted disease, the reason for the abortion, any follow-up treatment provided, and additional prescription information. This administrative regulation establishes the reporting criteria for abortions.

Section 1. Definitions. (1) "Abortion" is defined by KRS 311.720(1).

(2) "Probable post-fertilization age" is defined by KRS 311.781(6).

(3) "Reasonable medical judgment" is defined by KRS 311.781(7).

(4) "Serious risk of the substantial and irreversible impairment of a major bodily function" is defined by KRS 311.781(8).

Section 2. Reporting. (1) A person or institution shall comply with the reporting requirements of KRS 213.101(1) and (2).

(2) The report shall be filed irrelevant of the gestational age or probable post-fertilization age of the fetus at the time of the abortion.

(3) The report shall be made within three (3) days after the end of the month in which the abortion was performed through the cabinet's electronic database or on VS-913, Report of Abortion.

(4) The report shall:

(a) Contain the information required to be certified in writing including the following:

1. The probable post-fertilization age of the unborn child;

2. Whether the abortion was necessary to prevent the death of the pregnant woman or to avoid a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman;

3. The available methods or techniques considered and the reasons for choosing the method or technique employed;



4. Whether the physician determined in his or her reasonable medical judgment that termination of the pregnancy in the manner selected provides the best opportunity for the unborn child to survive;

5. If the physician did not choose the method of abortion that provides the best chance of survival for the unborn child, whether the pregnancy termination in that manner would have posed a greater risk of death of the pregnant woman or a greater risk of substantial and irreversible impairment of a major bodily function of the pregnant woman than other available methods of abortion; and

6. Any complications known to the provider as a result of the abortion, as set forth in KRS 311.774(3); and

(b) Not contain information that identifies the [physician,] [woman,] or man involved.

(5) Pursuant to KRS 213.106, a report shall be used in accordance with the provisions of KRS 213.101.

Section 3. Prescription Reporting. (1) In accordance with KRS 213.101(2), each prescription for a drug or combination of drugs for which the primary indication is the induction of abortion shall be reported by the physician prescribing the medication and the pharmacy dispensing the medication within three (3) [fifteen (15)] days after the end of the month in which the prescription was issued.

(2) The report shall be made through the cabinet's electronic database or on VS-913P, Abortion Prescription Reporting Form.

(3) The report shall:

(a) Contain the drug or combination of drugs prescribed; ~~and~~

(b) The information required by 2022 Ky. Acts ch. 210; and

(c) Not contain information that identifies the [physician,] [woman,] or man involved.

Section 4. Penalties. Failure to comply with the provisions of KRS 213.101(1) shall subject the reporting person or institution to the penalties provided in KRS 213.101(5) and (6).

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form VS-913P, "Abortion Prescription Reporting Form", 8/2022[6/2022][4/2020]; and

(b) Form VS-913, "Report of Abortion", 8/2022[6/2022][4/2020].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, first floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may be obtained, subject to applicable copyright law, at <https://chfs.ky.gov/agencies/dph/dehp/vsb/Pages/abreqadr.aspx>.

STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 13, 2022

FILED WITH LRC: September 13, 2022 at 2:00 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: Julie Brooks or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This emergency administrative regulation establishes the criteria for reporting abortions as described in KRS 213.101 and 2022 Ky. Acts ch. 210.

(b) The necessity of this administrative regulation: KRS 213.101(7) requires the Office of Vital Statistics (OVS) to promulgate administrative regulations for compliance with the reporting requirements of the statute. This emergency administrative regulation is necessary to ensure that each abortion that occurs in the commonwealth is reported to OVS in a timely

manner.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 213.101 requires the reporting of each abortion that occurs in the commonwealth and requires OVS to issue a public report by September 30 each year.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This emergency administrative regulation allows OVS to compile statistical data regarding the number of abortions that occur yearly and the abortion procedures utilized.

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

(a) How the amendment will change this existing administrative regulation: The amended after comments version of this emergency administrative regulation updates the material incorporated by reference for compliance with 2022 Ky. Acts ch. 210. The abortion prescription reporting form has been amended to include the date the medication was prescribed to the patient, the date the medication was dispensed to the patient, the date of the mail order, and the date of the internet order. The addition of the date will allow the Office of Vital Statistics to better monitor for compliance with the reporting requirements.

(b) The necessity of the amendment to this administrative regulation: The amended after comments version of this administrative regulation is necessary to ensure the most up to date and accurate abortion prescription reporting form is incorporated by reference.

(c) How the amendment conforms to the content of the authorizing statutes: 2022 Ky. Act ch. 210 expanded the abortion reporting requirements to include the full name and address of the physician and facility, the age of the father, if known, the Rh negative status of the patient, if the patient was treated for a sexually transmitted disease, the reason for the abortion, any follow-up treatment provided, and additional prescription information.

(d) How the amendment will assist in the effective administration of the statutes: The amended after comment version of this emergency administrative regulation will ensure all required elements are reported to the cabinet and will ensure the Office of Vital Statistics is able to monitor compliance with the reporting requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact any woman seeking an abortion and the physician who performs the abortion. On average, there are 2,616 abortions performed each year. The Office of Vital Statistics within the Department for Public Health will also be impacted 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: Physicians who perform abortions will need to be aware of the changes in reporting requirements, will need to monitor a woman who has received an abortion for complications, and will need to make reasonable efforts to ensure the woman receives any necessary follow-up treatment. Pharmacies that dispense the medications will need to be aware of the reporting requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Physicians and pharmacists reporting abortions will have no additional costs associated with this amended administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with the reporting requirements, physicians who perform abortions will be in full compliance with the authorizing statutes and will avoid any penalties that would result from violating the statutes. By complying with the medication reporting requirements, pharmacists will be in

compliance with the authorizing statutes and will avoid any penalties that would result from violating the statutes.

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

(a) Initially: The required changes to the current reporting data system will cost \$48,000 to implement.

(b) On a continuing basis: Ongoing costs for maintenance of the reporting data system and production of the required reports will be \$18,000 yearly. Staff costs for the Office of Vital Statistics to implement this administrative regulation is \$6,000 yearly.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The amended after comment version of this emergency administrative regulation does not require an increase in fees or funding for implementation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There is no increase in, or establishment of, fees associated with this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied. This amended after comments version of this emergency administrative regulation impacts all affected 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? This administrative regulation will impact the Office of Vital Statistics within the Division of Epidemiology and Health Planning in the Department for Public Health, 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 194A.050(1), 213.021, 213.101(1), (7), and 2022 Ky. Acts ch. 210.

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

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

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

(c) How much will it cost to administer this program for the first year? The total costs to implement the changes to the reporting data system as a result of the amendment to this administrative regulation will be \$48,000 for the first year.

(d) How much will it cost to administer this program for subsequent years? Ongoing costs for the reporting data system will be \$18,000 for subsequent years. Staff costs for the Office of Vital Statistics to implement this administrative regulation is \$6,000 yearly.

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 any costs savings for the

regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation will not generate any costs savings for the regulated entities.

(c) How much will it cost the regulated entities for the first year? The costs associated with the amendment to this administrative regulation are state costs only. The regulated facilities providing abortions will not have any costs associated with compliance with this administrative regulation. The total state costs in the first year will be \$48,000 for enhancements to the reporting system.

(d) How much will it cost the regulated entities for subsequent years? Ongoing state costs will be approximately \$24,000 a year for reporting system maintenance and staff 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)] This administrative regulation does not have a major economic impact.

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY  
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee  
IJC = Interim Joint Committee

FINANCE AND ADMINISTRATION CABINET  
Commonwealth Office of Technology  
(As Amended at ARRS, September 13, 2022)

BOARDS AND COMMISSIONS  
Board of Pharmacy  
(As Amended at ARRS, September 13, 2022)

200 KAR 1:016. Data breach notification forms.

RELATES TO: KRS ~~61.931~~, 61.932, 61.933

STATUTORY AUTHORITY: KRS 42.726~~(3)(2)(b)~~, 61.932(2)(b)2., 61.933

NECESSITY, FUNCTION, AND CONFORMITY: KRS 42.726~~(3)(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. **This administrative regulation establishes the data breach notification forms.**

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. **All documentation related to the delay shall be attached to the form.**

Section 2. Incorporation by Reference.

(1) The following **material is [materials are]** incorporated by reference:

(a) "Finance Form FAC-001, Suspected and Determined Breach Notification Form," **September 13 [Effective Date June 15], 2022;** and

(b) "Finance Form FAC-002, Delay Notification Record," **September 13 [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>.

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.

201 KAR 2:015. Continuing education.

RELATES TO: KRS ~~315.010~~, 315.065, 315.120, **315.121**

STATUTORY AUTHORITY: KRS 315.065, 315.110(1), 315.191(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.065(2) and (3) **require [requires]** [require] the Board of Pharmacy to establish continuing education requirements for pharmacists. This administrative regulation establishes requirements for the continuing pharmacy education of registered pharmacists and requires all registered pharmacists holding a license issued by the board to participate in continuing pharmacy education as a means of renewal of their licenses.

Section 1. Definitions.

(1) "Continuing education unit" or "CEU" is defined by KRS 315.010~~(8)(7)(8)~~.

(2) "Sponsor" means a person, school, association, company, corporation, or group who wishes to develop a continuing education program.

Section 2.

(1) Continuing education hours for credit shall be relevant to the practice of pharmacy and free of commercial bias.

(2) Continuing education hours shall be approved if approved by:

- (a) The Accreditation Council for Pharmacy Education (ACPE); or
- (b) The board.

Section 3.

(1) Continuing education sponsors shall submit an Application for Provider CE Approval to the board:

(a) At least sixty (60) days prior to the presentation date, if pre-approval is sought; or

(b) Between sixty (60) days prior and thirty (30) days after the presentation date, if pre-approval is not sought.

(2) Program changes shall be submitted to and approved by the board, or the approval of the program shall be void.

(3) Continuing education credit shall be given only once for each program per participant.

(4) Sponsors shall retain a file of each participant's program completion for three (3) years.

(5) Board approval of each program shall expire three (3) years after the date of approval.

Section 4.

(1) Pharmacists requesting approval of individually obtained continuing pharmacy education shall submit an Application for Pharmacist CE Approval to the board within thirty (30) days of completion of the educational presentation.

(2) The board shall notify the requesting pharmacist whether the application request has been approved or denied.

(3) Continuing education that has not been approved by ACPE or the board shall not be used to meet continuing education requirements for renewal or issuance of a license.

Section 5.

(1) A pharmacist shall:

(a) Complete a minimum of one and five-tenths (1.5) CEU (fifteen (15) contact hours) annually between January 1 and December 31; **and]**

(b) For licensing years 2023 through 2028, one (1) contact hour of the fifteen (15) contact hours shall be on the opioid epidemic or opioid use disorder; and.]

(c) Not transfer or apply excess hours or units for future years.

(2) A pharmacist may be granted a deferral on a year-to-year basis at the determination[discretion] of the board for illness, incapacity, or other extenuating circumstances.

(3) A pharmacist first licensed by the board within twelve (12) months immediately preceding the annual renewal date shall be exempt from the continuing pharmacy education provisions for that year.

(4) Pharmacists shall:

(a) Keep valid records, receipts, and certifications of continuing pharmacy education programs completed for three (3) years; and

(b) Submit that documentation to the board upon/en[~~upon~~] request.

(5) Submission of a fraudulent statement or certificate concerning continuing pharmacy education shall subject the pharmacist to discipline as provided in KRS 315.121.

Section 6. Each pharmacist[~~All pharmacists~~] shall keep the board informed of the pharmacist's[~~their~~] correct address[~~addresses~~].

Section 7. CEU may be transferred from another state to Kentucky if the transfer state recognizes Kentucky CEU.

Section 8. A licensee who failed to timely renew his or her license shall:

(1) Comply with the applicable provisions of KRS 315.120(2) or (3); and

(2) Complete fifteen (15) hours of continuing education for each year the applicant failed to renew his or her license, up to a maximum of seventy-five (75) hours.

Section 9. Incorporation by Reference.

(1) The following material is incorporated by reference:

[a] following material is incorporated by reference:]

[a] "Application for Provider CE Approval", June 2018; and is incorporated by reference]; ~~and~~ [.]

(b) [(2)] (b)] [The ] "Application for Pharmacist CE Approval", June 2018.

(2) [.] is incorporated by reference.

(3) [(2)] This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, 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 https://pharmacy.ky.gov/Forms/Pages/default.aspx.

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

## BOARDS AND COMMISSIONS

### Board of Dentistry

(As Amended at ARRS, September 13, 2022)

201 KAR 8:550. Anesthesia and sedation related to dentistry.

RELATES TO: KRS 313.035, 313.060

STATUTORY AUTHORITY: KRS 313.035(1)

NECESSITY, FUNCTION AND CONFORMITY: KRS 313.035(1) requires the board to promulgate administrative regulations related to anesthesia and sedation permits. The administration of local anesthesia, sedation, and general anesthesia is an integral part of dentistry and the foundation of pain control. This administrative regulation establishes requirements for permits to perform sedation or anesthesia associated with dentistry.

Section 1. Definitions. (1) "ADA" means the American Dental Association["~~Analgnesia" means the diminution or elimination of pain~~].

(2) "Analgnesia" means the diminution or elimination of pain["~~ADA" means American Dental Association~~].

(3) "ASA" means American Society of Anesthesiologists.

(4) "Continual" means repeated regularly and frequently in steady succession.

(5) "Continuous" means prolonged without any interruption.

(6) "Deep sedation" means a drug-induced depression of consciousness during which patients cannot be easily aroused, but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function could be impaired. The patient might require assistance in maintaining a patent airway, and spontaneous ventilation could be inadequate. Cardiovascular function is usually maintained.

(7) "Enteral" means a technique of administration in which the agent is absorbed through the gastrointestinal (GI) tract or oral mucosa (oral, rectal, or sublingual).

(8) "General anesthesia" means a drug-induced loss of consciousness during which a patient is not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation could be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function might be impaired.

(9) "Immediately available" means onsite at the facility and available for immediate use.

(10) "Local anesthesia" means the elimination or diminution of sensation, especially pain, in one (1) part of the body by the topical application or regional injection of a drug.

(11) "Maximum Recommended Dose" or "MRD" means the maximum FDA-recommended dose of a drug for minimal sedation, as printed in FDA-approved labeling for unmonitored home use.

(12) "Minimal sedation" means a minimally depressed level of consciousness produced by a pharmacological method that retains the patient's ability to independently and continuously maintain an airway and respond normally to tactile stimulation and verbal command. Although cognitive function and coordination might be modestly impaired, ventilatory and cardiovascular functions are unaffected.

(13) "Moderate sedation" means a drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. Intervention is not required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained. This term includes the enteral administration of drugs exceeding the maximum recommended dose during a single appointment.

(14) "Nitrous oxide sedation" or "N2O sedation" means a technique of inhalation sedation with nitrous oxide and oxygen.

(15) "Operating dentist" means a licensed dentist with primary responsibility for providing dental care during a procedure.

(16) "Pediatric patient" means a patient twelve (12) years of age or younger.

(17) "Qualified anesthesia provider" means a licensed anesthesiologist, Certified Registered Nurse Anesthetist, or dentist with an applicable sedation permit.

(18) "Qualified dentist" means a licensed dentist with an applicable sedation permit. [A qualified dentist can also be an operating dentist if they fulfill the requirement of subsection (15) of this section.]

(19) "Time-oriented anesthesia record" means documentation at appropriate time intervals of drugs administered, doses of drugs administered, and physiologic patient data obtained during patient monitoring.

(20) "Trained individual" means personnel with an active certification in Basic Life Support for Healthcare Providers, who has been trained in monitoring EKG's, pulse oximetry, blood pressures, airway management, and capnography. Training, whether formal or internal, is documented in employee records.

Section 2. Scope and Applicability. (1) The board shall be committed to the safe and effective use of sedation and anesthesia by licensed, educated, and trained dentists.

(2) Because large doses of local anesthetics, especially in combination with sedative agents, carry the risk of central nervous system depression, each licensed dentist shall be aware of the maximum, safe dosage limits for each patient.

(3) Level of sedation shall be independent of the route of administration. Moderate or deep sedation, or general anesthesia, may be achieved via any route of administration.

(4) Because sedation and general anesthesia are a continuum and it is not always possible to predict how an individual patient will respond, each licensed dentist intending to produce a given level of sedation shall be able to diagnose and manage the physiologic consequences for patients whose level of sedation becomes deeper than initially intended. For all levels of sedation, the qualified dentist shall have the training, skills, drugs, and equipment to identify and manage such an occurrence until either:

(a) Assistance arrives; or

(b) The patient returns to the intended level of sedation without airway or cardiovascular complications.

(5) Because new indications, agents, and techniques lead to changes in anesthesia and sedation practices, the board shall evaluate changes for safety, efficacy, and to what extent changes become accepted practice within the profession of dentistry.

Section 3. Nitrous Oxide Sedation. (1) Nitrous oxide sedation may be used by a Kentucky-licensed dentist without a sedation permit or by a Kentucky-licensed dental hygienist who is registered to deliver nitrous oxide analgesia under the direct supervision of a dentist pursuant to [as per] KRS 313.060(10).

(2) Equipment used in the administration of nitrous oxide sedation shall have functional safeguard measures that:

(a) Limit the minimum oxygen concentration to thirty (30) percent; and

(b) Provide for scavenger elimination of nitrous oxide gas.

(3) The dentist shall:

(a) Ensure that a patient receiving nitrous oxide is constantly monitored; and

(b) Be present in the office while nitrous oxide is being used.

(4) A Kentucky-registered dental assistant shall not independently administer nitrous oxide sedation, but may initiate nitrous oxide sedation if the dentist is in the office and gives the dental assistant specific instructions regarding the mode of administration and the titration, rate, and dosage of the anesthetic agent.

Section 4. Minimal Sedation. (1) A sedation permit shall not be required for a Kentucky-licensed dentist to provide minimal sedation [as defined by Section 4(12) of this administrative regulation].

(2) A patient whose only response is reflex withdrawal from repeated painful stimuli shall not be considered to be in a state of minimal sedation.

(3) The enteral administration of drugs exceeding the maximum recommended dose during a single appointment is considered to be moderate sedation, and Section 5 of this administrative regulation shall apply.

(4) Nitrous oxide, if used in combination with a sedative agent, may be considered to produce minimal, moderate, or deep sedation, or general anesthesia.

(5) If more than one (1) drug is administered enterally to achieve the desired sedation effect, with or without the concomitant use of nitrous oxide, Section 5 of this administrative regulation shall apply.

(6) A dentist who administers minimal sedation shall do so within a sufficient margin of safety to avoid an unintended loss of consciousness. The use of the MRD to guide dosing for minimal sedation is intended to create this margin of safety.

(7) If minimal sedation is administered to a patient who is taking another substance known to increase the sedative effects on the patient, Section 5 of this administrative regulation shall

apply.

(8) An operating dentist shall not be required to complete additional training to administer minimal sedation.

(9) The administration of minimal sedation by another dentist or qualified anesthesia provider shall require the operating dentist to maintain current certification in Basic Life Support for Healthcare Providers.

(10) Clinical guidelines.

(a) Patient history and evaluation. Patients considered for minimal sedation shall be evaluated prior to the start of any sedative procedure. In healthy or medically stable individuals who are in the patient physical status classification of (ASA I, II) as established in the ASA Physical Status Classification System, this evaluation shall consist of a review of the patient's current medical history and medication use. In addition, patients with significant medical considerations who are in the patient physical status classification of (ASA III, IV) as established in the ASA Physical Status Classification System shall, unless otherwise documented by the provider, require consideration of a consultation with their treating physician prior to being administered minimal sedation.

(b) Pre-operative evaluation and preparation.

1. The patient or the patient's parent, legal guardian, or caregiver, shall be advised regarding the planned procedure and any other anticipated possible procedures associated with the delivery of any sedative agents. Informed consent for the proposed sedation shall be obtained in writing prior to its administration.

2. Adequate oxygen supply and the equipment necessary to deliver oxygen under positive pressure shall be determined prior to the administration of minimal sedation.

3. The patient shall be physically examined prior to the administration of minimal sedation. Baseline vital signs including body weight, height, blood pressure, and pulse rate shall be obtained unless rendered impractical by the nature of the patient, procedure, or equipment. Body temperature shall be measured if clinically indicated.

4. Preoperative dietary restrictions shall be considered based on the sedative technique prescribed.

5. The patient or the patient's parent, legal guardian, or caregiver, shall be given preoperative verbal and written instructions regarding the patient's sedation and procedure.

(c) Personnel and equipment requirements.

1. Personnel. All clinical staff participating in the care of a minimally sedated patient shall be certified in Basic Life Support for Healthcare Providers.

2. Equipment.

a. A positive-pressure oxygen delivery system suitable for the patient being treated shall be immediately available.

b. All equipment shall be examined for proper performance prior to each administration of sedation.

c. If inhalation equipment is used, it shall have a fail-safe system that shall be examined and calibrated and a functioning device that shall prohibit the delivery of less than thirty (30) percent oxygen, or a calibrated and functioning in-line oxygen analyzer with audible alarm.

d. A scavenging system shall be used if gases other than oxygen or air are delivered to a patient.

3. Monitoring and documentation.

a. Monitoring. The dentist or a trained individual chosen by the dentist, shall remain in the treatment room during active dental treatment to monitor the patient continuously until the patient meets the criteria for discharge to the recovery area. The following shall be monitored unless precluded or invalidated by the nature of the patient:

(i) Consciousness. The patient's level of sedation and responsiveness to verbal commands shall be continually assessed;

(ii) Oxygenation. Oxygen saturation by pulse oximetry shall be continually evaluated;

(iii) Ventilation. The patient's chest excursions shall be monitored and respirations shall be verified; and

(iv) Circulation. Blood pressure and heart rate shall be evaluated pre-operatively and postoperatively.

b. Documentation. A sedative record shall be maintained for

each patient to whom sedation is administered. The sedative record shall include the names of all drugs administered including local anesthetics, the time administered, the route of administration, dosages, and monitored physiological parameters.

4. Recovery and discharge.

a. Oxygen and suction equipment shall be immediately available if a separate recovery area is utilized.

b. The dentist or a trained individual chosen by the dentist shall monitor the patient during recovery until the patient is ready for discharge.

c. The dentist shall examine the patient and document the patient's level of consciousness, oxygenation, ventilation, and circulation prior to discharge.

d. The patient, parent, escort, legal guardian, or caregiver shall be given post-operative verbal and written instructions prior to or upon discharge.

(d) Emergency management.

1. If a patient enters a deeper level of sedation than the dentist is qualified to provide, the dentist shall stop the dental procedure until the patient is returned to the intended level of sedation.

2. The operating dentist shall be responsible for the sedative management, adequacy of the facility and staff, equipment, protocols, and diagnosis and treatment of emergencies related to the administration of minimal sedation and patient rescue.

Section 5. Moderate Sedation. (1) A Moderate Sedation Permit issued by the board shall be required for a Kentucky-licensed dentist to administer moderate sedation ~~[as defined by Section 1(13) of this administrative regulation]~~.

(2) A dentist who administers moderate sedation shall do so within a sufficient margin of safety to avoid an unintended loss of consciousness.

(3) A qualified dentist shall be aware that repeated dosing of an agent before the effects of previous dosing can be fully appreciated could result in a greater alteration of the state of consciousness than intended. A dentist who administers moderate sedation shall refrain from administering an additional drug increment before the previous dose has taken full effect.

(4) A patient whose only response is reflex withdrawal from a painful stimulus shall not be considered to be in a state of moderate sedation.

(5) To qualify for a Moderate Sedation Permit, a dentist shall:

(a) Submit an Application for Sedation or Anesthesia Permit;

(b) Pay the fee required by 201 KAR 8:520; and

(c) Provide documentation that the dentist meets the educational requirements of subsections[paragraphs] ~~(6)(a) and (b) [or (7)]~~ of this section.

(6) Education requirements for moderate sedation.

(a) To administer moderate sedation to an adult patient, a dentist shall have current certifications in Basic Life Support for Healthcare Providers and Advanced Cardiac Life Support, and complete:

1. A comprehensive training program in moderate sedation that complies with the requirements established in the Moderate Sedation section of the ADA Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students at the time training was commenced; or

2. An advanced education program accredited by the Commission on Dental Accreditation that provides comprehensive training necessary to administer and manage moderate sedation commensurate with this administrative regulation.

(b) To administer moderate sedation to a pediatric patient, a dentist shall have successfully completed:

1. An advanced education program accredited by the Commission on Dental Accreditation that provides comprehensive training necessary to administer and manage moderate sedation commensurate with this administrative regulation; and

2. Current certifications in Basic Life Support for Healthcare Providers and Pediatric Advanced Life Support.

(c) If [To] authorizing[authorize] a third-party qualified anesthesia provider to administer moderate sedation to an adult patient, the operating dentist shall confirm that at least two (2)

members of the onsite care team maintain current certifications in Basic Life Support for Healthcare Providers and Advanced Cardiac Life Support. [The operating dentist or the facility at which the moderate sedation is being administered shall maintain a current certification in Basic Life Support for Healthcare Providers in order for a qualified anesthesia provider to provide moderate sedation.]

(d) If [To] authorizing[authorize] a third-party qualified anesthesia provider to administer moderate sedation to a pediatric patient, the operating dentist shall confirm that at least two (2) members of the onsite care team maintain current certifications in Basic Life Support for Healthcare Providers and Pediatric Advanced Life Support.

(e) Any valid moderate sedation permits issued prior to this administrative regulation shall ~~remain active until their expiration date and shall comply with the requirements of this section, except that moderate adult enteral and parenteral permit holders shall~~ have until December 31, 2023 to comply with subsection (6)(a)1. and 2. of this section.

(7) Clinical guidelines; patient history and evaluation.

(a) Patients considered for moderate sedation shall be evaluated prior to the start of any sedative procedure. In healthy or medically stable individuals who are in the patient physical status classification of (ASA I, II) as established in the ASA Physical Status Classification System, this evaluation shall consist of a review of the patient's current medical history, medication use, body mass index, airway evaluation, and ASA status.

(b) Patients with significant medical considerations who are in the patient physical status classification of (ASA III, IV) as established in the ASA Physical Status Classification System shall, unless otherwise documented by the provider, require consideration of a consultation with their treating physician prior to being administered moderate sedation.

(8) Pre-operative evaluation and preparation.

(a) The patient or the patient's parent, legal guardian, or caregiver, shall be advised regarding the planned procedure and any other anticipated possible procedures associated with the delivery of any sedative agents. Informed consent for the proposed sedation shall be obtained in writing prior to its administration.

(b) Adequate oxygen supply and the equipment necessary to deliver oxygen under positive pressure shall be determined prior to the administration of moderate sedation.

(c) The patient shall be physically examined prior to the administration of minimal sedation. Baseline vital signs including body weight, height, blood pressure, and pulse rate shall be obtained unless rendered impractical by the nature of the patient, procedure, or equipment. Body temperature shall be measured if clinically indicated.

(d) Preoperative dietary restrictions shall be considered based on the sedative technique prescribed.

(e) The patient or the patient's parent, legal guardian, or caregiver, shall be given preoperative verbal and written instructions regarding the patient's sedation and procedure, including pre-operative fasting instructions based on the ADA Guidelines for the Use of Sedation and General Anesthesia by Dentists[Dentist, adopted October 2016].

(9) Personnel and equipment requirements.

(a) Personnel. All clinical staff participating in the care of a moderately sedated patient shall be certified in Basic Life Support for Healthcare Providers.

(b) Equipment.

1. A positive-pressure oxygen delivery system suitable for the patient being treated shall be immediately available.

2. All equipment shall be examined for proper performance prior to each administration of sedation.

3. If inhalation equipment is used, it shall have a fail-safe system that shall be examined and calibrated and a functioning device that shall prohibit the delivery of less than thirty (30) percent oxygen, or a calibrated and functioning in-line oxygen analyzer with audible alarm.

4. A scavenging system shall be used if gases other than oxygen or air are delivered to a patient.

5. Equipment necessary to establish intravascular or intraosseous access and a defibrillator or automated external defibrillator shall be immediately available until the patient meets discharge criteria.

(10) Monitoring and documentation.

(a) Monitoring.

1. If leaving the room, a qualified dentist shall have at least one (1) month of general anesthesia training and shall select a trained individual to continuously monitor the patient; or

2. A qualified anesthesia provider shall remain in the treatment room during active treatment until the patient meets the criteria for discharge to the recovery area.

(b) The following shall be monitored:

1. Consciousness. The patient's level of sedation and responsiveness to verbal commands shall be continually assessed;

2. Oxygenation. Oxygen saturation by pulse oximetry shall be continually evaluated;

3. Ventilation: The qualified anesthesia provider shall be responsible for the observation of ventilation and breathing by monitoring end tidal CO<sub>2</sub> unless precluded or invalidated by the nature of the patient. In addition, ventilation shall be monitored by continual observation of qualitative signs, which may include auscultation of breath sounds with a precordial or pretracheal stethoscope, or observation of chest excursions;

4. Circulation. The qualified anesthesia provider shall continually evaluate blood pressure and heart rate unless invalidated by the nature of the patient and noted in the time-oriented anesthesia record; and

5. The patient's pulse oximetry, heart rate, end tidal CO<sub>2</sub>, blood pressure, and level of consciousness shall be monitored continually and recorded at least every five (5) minutes.

(c) Documentation. A sedative record shall be maintained for each patient to whom sedation is administered. The sedation record shall include the names of all drugs administered including local anesthetics, the time administered, the route of administration, dosages, and monitored physiological parameters.

(11) Recovery and discharge.

(a) Oxygen and suction equipment shall be immediately available if a separate recovery area is utilized.

(b) When active treatment concludes and the patient recovers to a minimally sedated level, the qualified anesthesia provider or a trained individual chosen by the qualified anesthesia provider shall remain with and continue to monitor the patient until the patient is discharged from the facility. The qualified anesthesia provider shall not leave the facility until the patient is discharged.

(c) The qualified anesthesia provider or a trained individual chosen by the qualified anesthesia provider shall continually monitor the patient's blood pressure, heart rate, oxygenation, and level of consciousness during recovery.

(d) The qualified anesthesia provider shall determine and document the patient's level of consciousness, oxygenation, ventilation, and circulation prior to discharge.

(e) The patient, parent, escort, legal guardian, or caregiver shall be given post-operative verbal and written instructions prior to or upon discharge.

(f) Because re-sedation could occur after the effects of a reversal agent have waned, if a pharmacological reversal agent is administered before the patient's discharge criteria have been met, the patient's escort shall be notified of the risk of re-sedation.

(12) Emergency management.

(a) If a patient enters a deeper level of sedation than the qualified anesthesia provider is qualified to provide, the procedure shall stop until the patient is returned to the intended level of sedation.

(b) The qualified anesthesia provider shall be responsible for the sedative management, adequacy of the facility and staff, equipment, protocols, and diagnosis and treatment of emergencies related to the administration of moderate sedation and patient rescue.

Section 6. Deep Sedation and General Anesthesia. (1) A Deep Sedation and General Anesthesia Permit issued by the board shall be required for a Kentucky-licensed dentist to administer ~~["]~~deep

sedation~~["]~~ and ~~["]~~general anesthesia~~[" as defined by Section 1(6) and (8) of this administrative regulation]~~.

(2) To qualify for a deep sedation and general anesthesia permit, a dentist shall:

(a) Submit an Application for Sedation or Anesthesia Permit;

(b) Pay the fee required by 201 KAR 8:520; and

(c) Provide documentation that the dentist meets the educational requirements of subsection[paragraph]subsection] (3)(a) of this section.

(3) Education requirements.

(a) To administer deep sedation or general anesthesia, a dentist shall have successfully completed:

1. An advanced education program accredited by the Commission on Dental Accreditation, which provides comprehensive training necessary to administer and manage deep sedation or general anesthesia; and

2. Current certifications in:

a. Basic Life Support for Healthcare Providers;

b. Advanced Cardiac Life Support if administering sedation to adult patients; and

c. Pediatric Advanced Life Support if administering sedation to pediatric patients.

(b) ~~If[To]~~ authorizing[authorize] a third-party qualified anesthesia provider to administer deep sedation or general anesthesia, the operating dentist shall **confirm that at least two (2) members of the onsite care team** maintain current certifications in:

1. Basic Life Support for Healthcare Providers;

2. Advanced Cardiac Life Support if sedation is administered to adult patients; and

3. Pediatric Advanced Life Support if sedation is administered to pediatric patients.~~[The operating dentist or the facility at which deep sedation or general anesthesia is being administered shall maintain a current certification in Basic Life Support for Healthcare Providers in order for a qualified anesthesia provider to provide deep sedation or general anesthesia.]~~

(4) Clinical guidelines; for patient history and evaluation. Each patient considered for deep sedation or general anesthesia shall be suitably evaluated prior to the start of any sedative procedure. In healthy or medically stable individuals who are in the patient physical status classification of (ASA I, II) as established in the ASA Physical Status Classification System, this evaluation shall consist of a review of the patient's current medical history, medication use, body mass index, airway evaluation, nothing by mouth status, and ASA status. In addition, patients with significant medical considerations who are in the patient physical status classification of (ASA III, IV) as established in the ASA Physical Status Classification System shall, unless otherwise documented by the provider, require consideration of a consultation with their treating physician prior to being administered deep sedation or general anesthesia.

(5) Pre-operative evaluation and preparation.

(a) The patient or the patient's parent, legal guardian, or caregiver, shall be advised regarding the planned procedure and any other anticipated possible procedures associated with the delivery of any sedative agents. Informed consent for the proposed sedation shall be obtained in writing prior to its administration.

(b) Adequate oxygen supply and the equipment necessary to deliver oxygen under positive pressure shall be confirmed prior to the administration of deep sedation or general anesthesia.

(c) The patient shall be physically examined prior to the administration of deep sedation or general anesthesia. Baseline vital signs including body weight, height, blood pressure, blood oxygen saturation, and pulse rate shall be obtained unless rendered impractical by the nature of the patient, procedure, or equipment. Body temperature shall be measured if clinically indicated.

(d) The patient or the patient's parent, legal guardian, or caregiver, shall be given preoperative verbal and written instructions regarding the patient's sedation and procedure, including pre-operative fasting instructions based on the ASA Summary of Fasting and Pharmacologic Recommendations contained within Appendix 1 of the ASA Practice Guidelines

**for Preoperative Fasting and the Use of Pharmacologic Agents to Reduce the Risk of Pulmonary Aspiration: Application to Healthy Patients Undergoing Elective Procedures.**

(e) An intravenous line shall be established and secured throughout the procedure, except for patients with special needs pursuant to [as per] subsection (9) of this section.

(6) Personnel and equipment requirements.

(a) Personnel. All clinical staff participating in the care of a deeply sedated patient or a patient who has been administered general anesthesia shall be certified in Basic Life Support for Healthcare Providers.

(b) A minimum of three (3) individuals shall be present while a patient is being treated with deep sedation or general anesthesia. If a pediatric patient is being treated with deep sedation or general anesthesia, in addition to the operating dentist, a separate qualified anesthesia provider shall manage the patient's anesthesia unless the anesthesia is performed by an oral and maxillofacial surgeon.

(c) Equipment.

1. A positive-pressure oxygen delivery system suitable for the patient being treated shall be immediately available.

2. All equipment shall be examined for proper performance prior to each administration of sedation.

3. If inhalation equipment is used, it shall have a fail-safe system that shall be examined and calibrated and a functioning device that shall prohibit the delivery of less than thirty (30) percent oxygen, or a calibrated and functioning in-line oxygen analyzer with audible alarm.

4. A scavenging system shall be used if gases other than oxygen or air are delivered to a patient.

5. Equipment necessary to establish intravenous access and to monitor end tidal CO<sub>2</sub> and auscultation of breath sounds shall be immediately available.

6. Resuscitation medications, a defibrillator, equipment and drugs necessary to provide advanced airway management and advanced cardiac life support shall be immediately available.

(7) Monitoring and documentation.

(a) Monitoring.

1. If leaving the room, a qualified dentist shall have at least one (1) month of general anesthesia training and shall select a trained individual to continuously monitor the patient; or

2. A qualified anesthesia provider shall remain in the treatment room during active treatment until the patient meets the criteria for discharge to the recovery area. The following shall be monitored:

3. Oxygenation. Oxygen saturation by pulse oximetry shall be continually evaluated;

4. Ventilation. For an intubated patient, end-tidal CO<sub>2</sub> shall be continually monitored and evaluated. For a non-intubated patient, end-tidal CO<sub>2</sub> shall be continually monitored and evaluated unless precluded or invalidated by the nature of the patient. In addition, ventilation shall be monitored by continual observation of qualitative signs, which may include auscultation of breath sounds with a precordial or pretracheal stethoscope, or observation of chest excursions;

5. Circulation. The qualified anesthesia provider shall continually evaluate heart rate and rhythm by ECG throughout the procedure, as well as the patient's pulse rate by pulse oximetry;

6. Temperature. A device capable of measuring body temperature shall be readily available during the administration of deep sedation or general anesthesia. Equipment necessary to continually monitor body temperature shall be available and used if triggering agents associated with malignant hyperthermia are administered; and

7. The patient's pulse oximetry, heart rate, end tidal CO<sub>2</sub>, blood pressure, and level of consciousness shall be monitored continually and recorded at least every five (5) minutes.

(b) Documentation. A sedative record shall be maintained for each patient to whom sedation is administered. The sedative record shall include the names of all drugs administered, including local anesthetics, the time administered, the route of administration, dosages, and monitored physiological parameters.

(8) Recovery and discharge.

(a) Oxygen and suction equipment shall be immediately available if a separate recovery area is utilized.

(b) When active treatment concludes and the patient recovers to a minimally sedated level, the qualified anesthesia provider or a trained individual chosen by the qualified anesthesia provider shall remain with and continue to monitor the patient until the patient is discharged from the facility. The qualified anesthesia provider shall not leave the facility until the patient is discharged.

(c) The qualified anesthesia provider or a trained individual chosen by the qualified anesthesia provider shall continually monitor the patient's blood pressure, heart rate, oxygenation, and level of consciousness during recovery.

(d) The qualified anesthesia provider shall determine and document the patient's level of consciousness, oxygenation, ventilation, and circulation prior to discharge.

(e) The patient, parent, escort, legal guardian, or caregiver shall be given post-operative verbal and written instructions prior to or upon discharge.

(9) Patients with special needs.

(a) Because many dental patients undergoing deep sedation or general anesthesia are mentally or physically challenged, it is not always possible to administer a comprehensive physical examination or appropriate laboratory tests prior to sedation. In this circumstance, the dentist responsible for administering the deep sedation or general anesthesia shall document the reasons preventing the examination of the patient in the patient's medical record.

(b) Deep sedation or general anesthesia may be administered without first establishing an indwelling intravenous line if the establishment of intravenous access after deep sedation or general anesthesia is rendered necessary because of poor patient cooperation.

(10) Emergency management. The qualified anesthesia provider shall be responsible for the sedative management, adequacy of the facility and staff, equipment, protocols, and diagnosis and treatment of emergencies related to the administration of patient rescue and deep sedation or general anesthesia.

Section 7. Multiple Application Levels. A dentist with the required education and training to provide more than one (1) level of sedation may mark all[the] levels of qualification on the Application for Sedation or Anesthesia Permit without paying additional application fees.

Section 8. Renewal of a Sedation or Anesthesia Permit. (1) A qualified dentist applying for renewal of an active permit to administer moderate sedation, or deep sedation or general anesthesia shall:

(a) Submit an Application for Renewal of Sedation or Anesthesia Permit;

(b) Pay the fee required by 201 KAR 8:520;

(c) Complete at least four (4) hours of clinical continuing education related to sedation or anesthesia in a classroom setting during the two (2) year term of the permit; and

(d) Maintain Advanced Cardiac Life Support[ACLS] or Pediatric Advanced Life Support[PALS] certification as required by Sections 5 and 6 of this administrative regulation.

(2) The continuing education requirements of this section shall be in addition to the license renewal requirements of 201 KAR 8:532.

(3) Unless properly renewed, each permit issued under this administrative regulation shall expire on December 31 of odd-number years.

Section 9. Location Requirement. A dentist holding a permit in accordance with this administrative regulation shall advise the board of the name and address of each facility where the dentist intends to or has ceased to administer anesthesia and sedation by submitting the Sedation or Anesthesia Permit Location Notification Form within ten (10) business days of the change.

Section 10. Facility Certificates. (1) The owner or operator of a facility shall obtain an Anesthesia or Sedation Facility Certificate from the board for any location at which a dentist holding a



sedation or general anesthesia permit provides moderate sedation, deep sedation, or general anesthesia. A facility certificate shall not be required for minimal sedation or nitrous oxide sedation alone.

(2) A facility certificate shall also be required if a dentist allows an independently practicing qualified anesthesia provider to administer sedation or general anesthesia in a dental office.

(3) A facility owner or operator desiring to obtain an Anesthesia or Sedation Facility Certificate shall:

(a) Submit an Application for Sedation or Anesthesia Facility Certificate; ~~and~~ ~~and~~

(b) Pay the fee required by 201 KAR 8:520~~;~~ ~~and~~

~~(c) Hold an active sedation permit issued by the board.]~~

(4) The owner or operator of a facility shall not allow an individual to administer anesthesia or sedation unless the individual is permitted to do so as established by this administrative regulation.

(5) The owner or operator of a facility shall maintain for at least seven (7) years, for inspection by the board, the name and license number of each dentist or independently practicing qualified anesthesia provider who has administered anesthesia or moderate sedation at that location.

(6) The owner or operator of a facility shall ensure that the facility remains equipped and staffed for the duration of time that moderate sedation, deep sedation, or general anesthesia is provided at the facility.

(7) The owner or operator of a facility shall ensure that the facility has nonexpired emergency and sedation medications.

Section 11. Renewal of Facility Certificate. (1) All active facility certificates shall expire on December 31 of odd-numbered years.

(2) ~~[Any valid facility certificates issued prior to this administrative regulation shall remain active until their original expiration date, at which time the requirements of this regulation shall have to be met prior to renewal.~~

~~(3)] To renew a facility certificate, the owner or operator shall:~~

~~(a) Submit an Application for Renewal of Sedation or Anesthesia Facility Certificate; and~~ ~~and~~

~~(b) Pay the fee required by 201 KAR 8:520~~;~~ and~~

~~(c) Maintain an active sedation permit issued by the board].~~

Section 12. Facility Criteria. (1) To qualify for a facility certificate, the owner or operator of a facility shall attest in the Application for Sedation or Anesthesia Facility Certificate that the facility has:

(a) An oxygen and gas delivery system with fail-safe backup;

(b) A safety indexed gas system;

(c) A suction and backup system;

(d) An auxiliary lighting system;

(e) An operating room to include:

1. At a minimum, ten (10) feet by eight (8) feet or eighty (80) square feet in size;

2. An operating primary light source and secondary portable back-up source, unless a backup generator is available; and

3. Accessibility by emergency medical staff;

(f) A recovery area, including oxygen, suction, and electronic monitoring, which may be a part of the operating room;

(g) Preoperative medical history and physical evaluation form; and

(h) Anesthesia and monitoring equipment checked to ensure working order and calibration, if applicable.

(2) The following shall be maintained in working order by the facility or by the qualified individual administering sedation or anesthesia at or on behalf of the facility:

(a) Drugs for each procedure, all of which shall be unexpired, including reversal agents and emergency medications;

(b) Devices to maintain an airway with positive pressure ventilation;

(c) Anesthesia records, including monitoring and discharge records;

(d) Monitoring equipment, including pulse oximeter, blood pressure monitor, and end tidal CO<sub>2</sub> monitor. An electrocardiogram (EKG) shall be required for facilities providing

deep sedation or general anesthesia;

(e) Defibrillator or automated external defibrillator (AED); and

(f) Precordial stethoscope or pretracheal stethoscope for deep sedation or general anesthesia in pediatric patients.

Section 13. Morbidity and Mortality Incident Reports. (1) A dentist shall report to the board, in writing, any death caused by or resulting from the ~~[dentist's]~~ administration of minimal sedation, moderate sedation, deep sedation, or general anesthesia within seven (7) days after the death.

(2) A dentist shall report to the board, in writing, any incident that occurred at a facility operating under a Sedation or Anesthesia Facility permit that resulted in hospital inpatient admission or emergency room visit caused by or resulting from the ~~[dentist's]~~ administration of minimal sedation, moderate sedation, deep sedation, or general anesthesia within thirty (30) days after the hospitalization or emergency room visit.

(3) The written report to the board required in subsections (1) and (2) of this section shall include:

(a) The date of the incident;

(b) The name, age, and address of the patient;

(c) The patient's original complete dental records;

(d) The name and permit number of the dentist and the name and address of all other persons present during the incident;

(e) The address where the incident took place;

(f) The preoperative physical condition of the patient;

(g) The type of anesthesia and dosages of drugs administered to the patient;

(h) The techniques used in administering the drugs;

(i) Any adverse occurrence including:

1. The patient's signs and symptoms;

2. The treatment instituted in response to adverse occurrences;

3. The patient's response to the treatment; and

4. The patient's condition on termination of any procedures undertaken; and

(j) A narrative description of the incident including approximate times and evolution of symptoms.

(4) The duties established in this section shall apply to every dentist who administers any type of sedation or anesthesia.

Section 14. Registered Dental Assistant Duties while Working with Sedation Permit Holders. A registered dental assistant working with a qualified dentist administering sedation or anesthesia in accordance with this administrative regulation may, under direct supervision:

(1) Apply noninvasive monitors on the patient;

(2) Perform continuous observation of patients and noninvasive monitors appropriate to the level of sedation, during the pre-operative, intra-operative, and post-operative (recovery) phases of treatment;

(3) Report monitoring parameters at pre-determined intervals, and if changes in monitored parameters occur;

(4) Record vital sign measurements in the sedation record;

(5) Establish and remove intravenous lines if the registered dental assistant has completed training in intravenous access;

(6) Assist in the management of a patient emergency; and

(7) Administer medications into an existing intravenous line upon the verbal order and direct supervision of a qualified dentist in accordance with this administrative regulation.

Section 15. Administration by Qualified Anesthesia Provider.

(1) An operating dentist may authorize the administration of sedation or anesthesia by a qualified anesthesia provider.

(2) The administration of anesthesia or sedation by an individual established in subsection (1) of this section shall:

(a) Comply with the requirements of this administrative regulation; and

(b) Not require board review prior to the administration of sedation or anesthesia.

(3) Nothing in this section shall preclude a dentist from working with a qualified anesthesia provider to provide care in an ambulatory care center or hospital.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Sedation or Anesthesia Permit", March 2020;

(b) "Application for Sedation or Anesthesia Facility Certificate", March 2020; ~~and~~

(c) "Sedation or Anesthesia Permit Location Notification Form", March 2020;

(d) "ASA Physical Status Classification System", December 2020;

(e) "ADA Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students", October 2016;

(f) "ADA Guidelines for the Use of Sedation and General Anesthesia by Dentists", October 2016;

(g) "ASA Practice Guidelines for Preoperative Fasting and the Use of Pharmacologic Agents to Reduce the Risk of Pulmonary Aspiration: Application to Healthy Patients Undergoing Elective Procedures", March 2017;

(h) "Application for Renewal of Sedation or Anesthesia Permit", March 2020; and

(i) "Application for Renewal of Sedation or Anesthesia Facility Certificate", March 2020.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, Monday through Friday 8 a.m. through 4:30 p.m. This material is also available on the board's Web site at <http://dentistry.ky.gov>.

CONTACT PERSON: Jeff Allen, Executive Director, Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email [jeffrey.allen@ky.gov](mailto:jeffrey.allen@ky.gov).

**TOURISM, ARTS AND HERITAGE CABINET  
Department of Fish and Wildlife Resources  
(As Amended at ARRS, September 13, 2022)**

**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 of Fish and Wildlife to promulgate administrative regulations to establish open seasons for the taking of wildlife ~~and~~ to regulate bag limits, and to implement or carry out the purposes of KRS Chapter 150. KRS 150.305(1) authorizes [150.305(3) and (4) authorize] the department to promulgate administrative regulations concerning possession of wildlife protected by KRS Chapter 150. KRS 150.305(3) requires the possession of migratory birds to be governed by federal regulations. KRS 150.305(4) authorizes the commissioner, or his or her designee, to inspect commercial frozen food lockers [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; ~~or~~ wheat or other grain; ~~or~~ salt; ~~or~~ other feed ~~whatsoever~~ capable of luring, attracting, or enticing migratory game[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; ~~or~~ wheat or other grain; ~~or~~ salt; ~~or~~ other feed so as to constitute for migratory game[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 ~~for~~ 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 shall[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 a[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 the[such] birds are and have been for a period of ten (10) consecutive days prior to the[such] taking, confined within an enclosure which substantially reduces the audibility of their calls and totally conceals the[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 shall[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 not prohibit:

1. The taking of all migratory game birds, including waterfowl, on or over standing crops or ~~or~~ flooded standing crops, including:

a. Aquatics; [;]

b. Flooded harvested croplands; [;]

c. Grain crops properly shocked on the field where grown; [;] or

d. 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, if 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.

(3) A baited area shall remain a baited area for ten (10) days following complete removal of all corn, wheat or other grain, salt, or other feed.

Section 3. Transporting, Importing and Exporting. (1) Migratory game birds lawfully killed and possessed in accordance with the hunting laws and administrative regulations of any foreign

country~~[or]~~ any state in the United States, or subdivision of a state~~[thereof]~~, shall~~[must]~~ be imported, exported, or transported in accordance with the provisions specified in 50 C.F.R. Part 20[Title 50, Chapter 1, Subchapter B, Part 20 of the Code of Federal Regulations].

(2) A~~[No]~~ person shall not 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) A~~[No]~~ person shall not put or leave any migratory game birds at any place, other than at his or her 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 the~~[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 the~~[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) A~~[No]~~ person shall not receive, or have in custody, any migratory game birds belonging to another person unless the~~[such]~~ birds are tagged as required under subsection (1) of this section.

(4) A~~[No]~~ person shall not transport migratory game birds belonging to another person unless the~~[such]~~ birds are tagged as required under subsection (1) of this section.

Section 5. Commercial Frozen Food Lockers~~[Preservation Facilities]~~. (1) A~~[No]~~ commercial frozen food locker~~[preservation facility]~~ shall receive or have in custody any migratory game birds unless the~~[such]~~ birds are tagged as required in Section 4(1) of this administrative regulation.

(2) A~~[No]~~ commercial frozen food locker~~[preservation facilities]~~ shall not

(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 the~~[such]~~ birds were received;
3. The name and address of the person from whom the~~[such]~~ birds were received;
4. The date the~~[such]~~ birds were disposed of; and
5. The name and address of the person to whom the~~[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 the facility~~[such facilities]~~ at all reasonable hours and inspecting the records and the premises where the~~[such]~~ operations are being carried on.

Section 6. Wanton Waste Law. A~~[No]~~ person shall not 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.

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.

TOURISM, ARTS AND HERITAGE CABINET  
Department of Fish and Wildlife Resources  
(As Amended at ARRS, September 13, 2022)

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 of Fish and Wildlife to promulgate administrative regulations governing the buying, selling, or transporting of wildlife. KRS 150.720 requires the department to promulgate administrative regulations concerning health requirements, eradication of diseases, importation, unique individual identifiers, and the responsibility of ~~[150.720(2) authorizes the department and the Department of Agriculture to hold]~~ a person who imports a diseased animal into the Commonwealth, in violation of statute or administrative regulation,~~[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 of these species~~[thereof]~~, including all members of the Cervidae family and hybrids of this family~~[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, except for ~~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 of these species~~[thereof]~~, including all wild members of the Order Lagomorpha and hybrids of this order~~[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:~~[(f)]~~

(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;

~~(d)~~~~[(c)]~~ 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 parts~~[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 the~~[no]~~ contents ~~[thereof]~~ are not permitted to be deposited or disposed of within the state.

(3) Transportation of cervid carcasses or carcass 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 carcass 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.

[(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 ~~parts~~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 ~~parts~~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~~part[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 ~~carcass~~ 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 ~~the~~no contents ~~thereof~~ are **not** permitted to be deposited or disposed of within the state.

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.

### **DEPARTMENT OF AGRICULTURE Office of Consumer and Environmental Regulation (As Amended at ARRS, September 13, 2022)**

#### **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 license 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 **administrative regulation shall do** not apply to ~~the following persons~~:

- (a) Persons conducting laboratory research involving restricted use pesticides; ~~and~~
- (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 established in paragraphs (a) through (l) of this subsection.~~

(a) The examination ~~shall~~**must** be presented and answered in writing.

(b) The examination ~~shall~~**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 ~~shall~~**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 ~~shall~~**must** be monitored throughout the examination period.

(e) Candidates ~~shall~~**must** be instructed in examination procedures before beginning the examination.

(f) Examinations ~~shall~~**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 ~~shall~~**must** not have verbal or non-verbal communication with anyone other than the proctor during the examination period.

(h) ~~[No portion of]~~The examination, ~~and portion of the examination~~, or any associated reference materials ~~shall not~~**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 ~~shall be those~~~~are those that are~~ approved by the department and provided and collected by the proctor.

(j) Reference materials provided to examinees ~~shall be~~~~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 ~~shall report~~~~reports~~ to the department any examination administration inconsistencies or irregularities, including, ~~for example,~~~~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 ~~shall~~~~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 ~~could~~~~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, ~~for example,~~~~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; ~~and~~

(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 ~~threaten~~~~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; ~~and~~.

(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; ~~and~~.

(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 ~~competency with~~~~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; ~~and~~

(b) Understanding instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels and labeling; ~~and~~

(c) Understanding that it is a violation of federal law to use any registered pesticide in a manner inconsistent with its labeling; ~~and~~

(d) Understanding labeling requirements that a certified applicator shall~~must~~ be physically present at the site of the application; ~~and~~

(e) Understanding labeling requirements for supervising noncertified applicators working under the direct supervision of a certified applicator; ~~and~~

(f) Understanding that applicators shall~~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; ~~and~~

(g) Understanding the meaning of product classification as either general or restricted use and that a product may be unclassified; ~~and~~

(h) Understanding and complying with product-specific notification requirements; ~~and~~

(i) Recognizing and understanding the difference between mandatory and advisory labeling language; ~~and~~

(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; ~~and~~

(b) Understanding that a pesticide's risk is a function of exposure and the pesticide's toxicity; ~~and~~

(c) Recognition of likely ways in which dermal, inhalation, and oral exposure could~~may~~ occur; ~~and~~

(d) Common types and causes of pesticide mishaps; ~~and~~

(e) Precautions to prevent injury to applicators and other individuals in or near treated areas; ~~and~~

(f) Need for, and proper use of, protective clothing and personal protective equipment; ~~and~~

(g) Symptoms of pesticide poisoning; ~~and~~

(h) First aid and other procedures to be followed in case of a pesticide mishap; ~~and~~

(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; ~~and~~

(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; ~~and~~

(b) Types of terrain, soil, or other substrate; ~~and~~

(c) Presence of fish, wildlife, and other non-target organisms; ~~and~~

(d) Drainage patterns; ~~and~~

(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~~product(s)~~ for effective pest control; ~~and~~

(b) Verifying that the labeling does not prohibit the use of the product to control the target pest~~pest(s)~~; ~~and~~

(5) Pesticides. Characteristics of pesticides, including ~~all of the following~~:

(a) Types of pesticides; ~~and~~

(b) Types of formulations; ~~and~~

(c) Compatibility, synergism, persistence, and animal and plant toxicity of the formulations; ~~and~~

(d) Hazards and residues associated with use; ~~and~~

(e) Factors that influence effectiveness or lead to problems such as pesticide resistance; ~~and~~

(f) Dilution procedures; ~~and~~

(6) Equipment. Application equipment, including ~~all of the following~~:

(a) Types of equipment and advantages and limitations of each type; ~~and~~

(b) Use, maintenance, and calibration procedures; ~~and~~

(7) Application methods. Selecting appropriate application methods, including ~~all of the following~~:

(a) Methods used to apply various forms and formulations of pesticides; ~~and~~

(b) Knowledge of which application method to use in a given situation and that use of a fumigant and aerial application requires additional certification; ~~and~~

(c) How selection of application method and use of a pesticide could~~may~~ result in proper use, unnecessary or ineffective use, and misuse; ~~and~~

(d) Prevention of drift and pesticide loss into the environment; ~~and~~

(8) Laws and regulations. Knowledge of all applicable state, tribal, and federal laws and regulations; ~~and~~

(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; ~~and~~

(b) The recordkeeping requirements of pesticide safety training for noncertified applicators who use pesticides under the direct supervision of a certified applicator; ~~and~~

(c) Providing use-specific instructions to noncertified applicators using pesticides under the direct supervision of a certified applicator; ~~and~~

(d) Explaining pertinent state, tribal, and federal laws and regulations to noncertified applicators who use pesticides under the direct supervision of a certified applicator; ~~and~~

(10) Professionalism. Understanding the importance of ~~all of the following~~:

(a) Maintaining chemical security for restricted use pesticides; ~~and~~

(b) How to communicate information about pesticide exposures and risks with customers and the public; ~~and~~

(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; ~~and~~

(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 shall include~~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 ***shall include[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: -]*** Jungi, 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 ***shall[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 ***shall include[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 ***could[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 *if/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 *shall[must]* be in effect, how long it *shall[must]* be kept on file, where it *shall[must]* be kept during the application, and who *shall[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 *shall[must]* prepare it, and when it *shall[must]* be completed; *and*

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 *the[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; *and[-]*

(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 *because[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 *are necessary[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 *shall[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 *shall[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 *shall[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; *and[-]*

(e) Performing aerial application. The applicator *shall[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 of 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 **shall[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, **for example, [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 **shall[must]** be in effect, how long it **shall[must]** be kept on file, where it **shall[must]** be kept during the application, and who **shall[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 **shall[must]** prepare it, and when it **shall[must]** be completed; **and[.]**

(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 of 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 **shall[must]** be in effect, how long it **shall[must]** be kept on file, where it **must[must]** be kept during the application, and who **shall[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 **shall[must]** prepare it, and when it **shall[must]** be completed; **and**

(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 **established[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 accordance with subsection (2) of this section**, 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 **shall[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 **shall[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 **shall[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;[f.]

c. Understanding that it is a violation of Federal law to use any registered pesticide in a manner inconsistent with its labeling;[f.]

d. Understanding when a certified applicator shall[must] be physically present at the site of the application based on labeling requirements;[f.]

e. Understanding labeling requirements for supervising noncertified applicators working under the direct supervision of a certified applicator;[f.]

f. Understanding that applicators shall[must] comply with all use restrictions and directions for use contained in pesticide labels and labeling;[f.]

g. Understanding that additional certification and licensing is required to use restricted use pesticides for fumigation or aerial application;[f.]

h. Understanding the meaning of product classification as either general or restricted use[f.] and that a product may be unclassified;[f.]

i. Understanding and complying with product-specific notification requirements;and[f.]

j. Recognizing and understanding the difference between mandatory and advisory labeling language;[f.]

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;[f.]

b. Understanding that a pesticide's risk is a function of exposure and the pesticide's toxicity;[f.]

c. Recognition of likely ways in which dermal, inhalation, and oral exposure could[may] occur;[f.]

d. Common types and causes of pesticide mishaps;[f.]

e. Precautions to prevent injury to applicators and other individuals in or near treated areas;[f.]

f. Need for, and proper use of, protective clothing and personal protective equipment.

g. Symptoms of pesticide poisoning;[f.]

h. First aid and other procedures to be followed in case of a pesticide mishap;and[f.]

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;[f.]

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;[f.]

b. Types of terrain, soil, or other substrate;[f.]

c. Presence of fish, wildlife, and other non-target organisms;and[f.]

d. Drainage patterns;[f.]

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; and[product(s).]

b. Verifying that the labeling does not prohibit the use of the product to control the target pest;[pest(s).]

5. Pesticides. Characteristics of pesticides, including[all of the following]:

a. Types of pesticides;[f.]

b. Types of formulations;[f.]

c. Compatibility, synergism, persistence, and animal and plant toxicity of the formulations;[f.]

d. Hazards and residues associated with use;[f.]

e. Factors that influence effectiveness or lead to problems such as pesticide resistance;and[f.]

f. Dilution procedures;[f.]

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;[f.]

b. Knowledge of which application method to use in a given situation and that use of a fumigant or aerial application requires additional certification;[f.]

c. How selection of application method and use of a pesticide could[may] result in proper use, unnecessary or ineffective use, and misuse;and[f.]

d. Prevention of drift and pesticide loss into the environment;[f.]

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;[f.]

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 302 KAR 26:070[304 KAR 27:005] for private applicators who supervise noncertified applicators using restricted use pesticides;[f.]

b. Providing use-specific instructions to noncertified applicators using restricted use pesticides under the direct supervision of a certified applicator;and[f.]

c. Explaining appropriate State, Tribal, and Federal laws and regulations to noncertified applicators working under the direct supervision of a certified applicator;[f.]

10. Stewardship. Understanding the importance of [all of the following]:

a. Maintaining chemical security for restricted use pesticides;and[f.]

b. How to communicate information about pesticide exposures and risks with agricultural workers and handlers and other persons;and[f.]

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;[f.]

b. How to avoid contamination of ground and surface waters;[f.]

c. Understanding pre-harvest and restricted entry intervals and entry restricted periods and areas;[f.]

d. Understanding specific pesticide toxicity and residue potential when pesticides are applied to animal or animal product agricultural commodities;and[f.]

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 shall[must] be at least eighteen (18) years old.

(3) Private applicator competency. The certification of competency for each private applicator candidate shall[must] be established based upon the standards established[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 established[described] in paragraph (a) of this subsection or a non-examination training process as established[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 shall[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 ~~shall~~**[must]** conform to ~~[all of] the [following]~~ criteria ~~established in subparagraphs 1. and 2. of this paragraph.~~**[-]**

1. Identification. Each person seeking certification ~~shall~~**[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 ~~shall~~**[must]** cover the competency standards ~~established~~**[outlined]** in ~~subsection (1)(c) of this section~~**[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 ~~shall~~**[do]** not apply to ~~the following persons~~**[-]**:

(a) Persons conducting laboratory research involving restricted use pesticides; ~~and~~**[-]**

(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 ~~shall~~**[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 ~~shall~~**[must]** obtain qualification by examination or training certification~~[-]~~**[-]**

(2) A licensee holding a current Category 1(b) Agricultural Pest Control, Agricultural Fumigation ~~shall~~**[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 ~~shall~~**[must]** obtain qualification by examination or training certification~~[-]~~**[-]**

(3) A licensee holding a current Category 18, Golf Course, Category 19, Interior Landscapes, or Category 20, Sports Turf, ~~shall~~**[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 ~~shall~~**[must]** obtain qualification by examination or training certification~~[-]~~**[-]**

(4) A licensee holding a current Category 17, Wood Preservatives, ~~shall~~**[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 ~~shall~~**[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.

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.

**DEPARTMENT OF AGRICULTURE**  
**Office of Consumer and Environmental Regulation**  
**(As Amended at ARRS, September 13, 2022)**

**302 KAR 26:030. Pesticide 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 pesticide-related 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 by 302 KAR Chapter 26[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 these[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 as established in Section 3 of this administrative regulation[according to 302 KAR 26:030, Section 3].

(2) Private applicators, dealers, structural pest management companies, licensed operators, licensed applicators, and[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 if[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 these[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 as established in Section 2 of this administrative regulation[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 if[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 these[such] records available to the department upon request.

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.

#### DEPARTMENT OF AGRICULTURE Office of Consumer and Environmental Regulation (As Amended at ARRS, September 13, 2022)

#### 302 KAR 26:050. Pesticide 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 require[requires] the department to promulgate administrative regulations pertaining to registration and supervision of trainees under KRS Chapter 217B. This administrative regulation establishes pesticide-related 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. ~~A fit shall be unlawful for any~~ person shall not 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 administrative 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 established/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 established in paragraphs (a) through (c) of this subsection before using the pesticide.~~;~~

(a) The trainee shall be/has been trained in accordance with Section 6 of this administrative regulation and shall apply/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 shall be/is at least eighteen (18) years old.

Section 5. Use-specific Conditions that Shall/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 established in subsections (1) through (7) of this section 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) ~~If/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 shall be/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 (for example/e.g., surface and ground water, endangered species, local population) and the conditions of application (for example/e.g., equipment, method of application, formulation) could/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 shall/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 shall/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 shall/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.~~;~~

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(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 shall~~must~~ include labeling directions, precautions, and requirements applicable to the specific use and site, and how the characteristics of the use site (for example~~e.g.~~), surface and ground water, endangered species, local population, and risks) and the conditions of application (for example~~e.g.~~), equipment, method of application, formulation, and risks) could~~might~~ increase or decrease the risk of adverse effects. The supervising operator or applicator shall~~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 if~~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 shall be~~is~~ worn and use 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;~~and~~~~[-]~~

(y) The supervising operator's or applicator's responsibility to ensure that a means to immediately communicate with the supervising operator or applicator shall be~~is~~ available to each trainee using any pesticides under his or her direct supervision.

Section 7. Recordkeeping. Supervising operators or applicators shall~~must~~ create or verify the existence of records documenting that a trainee has the qualifications required in Section 4~~3(2)~~ of this administrative regulation.

(1) If the trainee was trained in accordance with Section 4~~3(2)~~ of this administrative regulation, the record shall~~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 at least 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 shall~~do~~ not apply to ~~the following persons~~:

(1) Persons conducting laboratory research involving restricted or general use pesticides;~~and~~~~[-]~~

(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.

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.

### DEPARTMENT OF AGRICULTURE Office of Consumer and Environmental Regulation (As Amended at ARRS, September 13, 2022)

#### 302 KAR 26:060. Identification of pesticide 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 pesticide-related 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.

(1) Identification of vehicles may be permanent or removable;~~[-]~~

(2) Removable~~however~~ signs shall accompany the vehicle and be visible at all times for purpose of identification.

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.

### DEPARTMENT OF AGRICULTURE Office of Consumer and Environmental Regulation (As Amended at ARRS, September 13, 2022)

#### 302 KAR 26:070. Non-certified pesticide 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, and~~[-]~~ KRS 217B.050 requires the department to promulgate administrative regulations pertaining to necessary to carry out the purpose and intent of KRS Chapter 217B~~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 pesticide private applicators using non-certified applicators to apply pesticides.

Section 1. Definition. "Non-certified applicator" means a person who has not been certified by training or examination

and uses pesticides under the direct supervision of a private applicator.

**Section 2.** Applicability. This administrative regulation shall apply/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 3.[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 established/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 established in paragraphs (a) through (c) of this subsection before using the pesticide.;

(a) The non-certified applicator has been trained in accordance with Section 5[4] of this administrative regulation [of-this administrative-regulation-]within the last twelve (12) months.;

(b) The non-certified applicator shall be/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 shall be/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 4.[Section—3.]** Use-specific Conditions that Shall/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 established in subsections (1) through (6) of this section 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) if/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 shall be/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 (for example[e.g.], surface and ground water, endangered species, local population) and the conditions of application (for example[e.g.], equipment, method of application, formulation) could/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 if/when required by the product labeling.

**Section 5.[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 shall/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 shall/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 ~~shall~~**[must]** include labeling directions, precautions, and requirements applicable to the specific use and site, and how the characteristics of the use site ~~(for example, e.g.,~~**[e.g.,]** surface and ground water, endangered species, local population, and risks) and the conditions of application ~~(for example, e.g.,~~**[e.g.,]** equipment, method of application, formulation, and risks) ~~could~~**[might]** increase or decrease the risk of adverse effects. The supervising private applicator ~~shall~~**[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 ~~if/where~~**[if/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 ~~shall be/is~~**[shall be/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. ~~and~~**[and]**.

(y) The supervising private applicator's responsibility to ensure that a means to immediately communicate with the supervising private applicator ~~shall be/is~~**[shall be/is]** available to each non-certified applicator using pesticides under his or her direct supervision.

**Section 6. [Section—5.]** Recordkeeping. The supervising private applicator ~~shall~~**[must]** create or verify the existence of records documenting that a non-certified applicator has the qualifications required in Section ~~3(2)(2)(2)]~~**[3(2)(2)(2)]** of this administrative regulation.

(1) If the non-certified applicator was trained in accordance with Section ~~3(2)(2)(2)]~~**[3(2)(2)(2)]** of this administrative regulation, the record ~~shall~~**[must]** contain ~~[all of ]the [ following information]~~**[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 ~~at least~~**[at least]** three (3) years from the date the non-certified applicator used the pesticide.

**Section 7. [Section—6.]** Exceptions. The requirements in Sections ~~2 through 6(1 through 5)]~~**[2 through 6(1 through 5)]** of this administrative regulation ~~shall~~**[do]** not apply to ~~[the following persons]~~**[the following persons]**:

(1) Persons conducting laboratory research involving pesticides. ~~and~~**[and]**.

(2) Doctors of medicine and doctors of veterinary medicine applying pesticides to patients during the course of the ordinary practice of those professions.

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.

**DEPARTMENT OF AGRICULTURE**  
**Office of Consumer and Environmental Regulation**  
**(As Amended at ARRS, September 13, 2022)**

**302 KAR 26:080. Lawn, turf, ornamental and interior plantscape pesticide-related 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 pesticide-related 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; ~~and~~**[and]**

(b) Immediately following an application to a lawn, ~~[the applicator shall ]~~**[the applicator shall ]** place a lawn marker at a prominent location in the lawn. ~~;~~

**1. [(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. ~~;~~

**2. [(d)]** Lettering on the lawn marker shall be in a contrasting color and shall read on one ~~(1)~~**[1]** 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. ~~;~~

**3. [(e)]** The lawn marker ~~may~~**[shall]** be removed and discarded by the property owner, ~~[or ]~~**[or ]** resident, or other person authorized by the property owner or resident, the day following an application. ~~;~~

**4. [(f)]** For applications to residential properties of three (3) families or less, the applicator shall place one (1) lawn marker per property. ~~;~~ ~~and~~**[and]**

**5. [(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 ~~or her~~**[or her]** 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 ~~requirements established in paragraphs (a) through (f) of this subsection~~**[requirements established in paragraphs (a) through (f) of this subsection]** ~~following~~**[following]** shall be ~~met~~**[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 (1) 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 at least three (3) years and be available for/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 requirements established in paragraphs (a) through (f) of this subsection/following shall be met/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 at least three (3) years and be available for/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. Civil penalties shall be assessed as established in as provided by KRS 217B.193. The department[, 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 shall constitute/is declared to be a violation of 302 KAR Chapter 26[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; and

(3) Failed to follow notification and information requirements in accordance with Section 1, 2, 3, or 4 of this administrative regulation, including failure to:

(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) Provide/Failure to furnish customer required information at application; or

(e) Provide/Failure to furnish prior notification of application when requested.

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.

**DEPARTMENT OF AGRICULTURE**  
**Office of Consumer and Environmental Regulation**  
**(As Amended at ARRS, September 13, 2022)**

**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.515, 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 established/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, and similar 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 state/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 at least twenty-four (24) months after the notification is issued and shall be available for 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) through 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) through (f) 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 at least thirty-six (36) months by the certified applicator after it is received and shall be available for 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.

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.

### DEPARTMENT OF AGRICULTURE Office of Consumer and Environmental Regulation (As Amended at ARRS, September 13, 2022)

#### 302 KAR 26:150. Pesticide-related 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 of KRS Chapter 217B 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 stated/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 stated/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 stated/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 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.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 stated/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. In lieu of Notwithstanding the monetary penalty established/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 requirement of 302 KAR Chapter 26[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 stated[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 established[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 established[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.

**JUSTICE AND PUBLIC SAFETY CABINET  
Department of State Police  
(As Amended at ARRS, September 13, 2022)**

**502 KAR 11:010. Application for license to carry concealed deadly weapon.**

RELATES TO: KRS 237.110

STATUTORY AUTHORITY: KRS 16.080(1), 237.110(7)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.110(7)(e) requires the department [Department of Kentucky State Police] to promulgate an administrative regulation establishing[establish] the application form for a license to carry a concealed deadly weapon. This administrative regulation establishes the application form and procedures.

Section 1. Definitions. (1) "Application form" means the "Commonwealth of Kentucky Carry Concealed Deadly Weapons/LEOSA: Application for License."

(2) "Department" means the Department of [Kentucky] State Police.

Section 2. (1) Application forms shall not be stored in an area accessible to the public.

(2) Except as permitted by Section 11[10] of this administrative regulation, an application form shall not be removed from the office of the sheriff.

Section 3. An application form shall be identified by a unique number that shall be:

- (1) Expressed on the application form as a bar code that contains the application number;
- (2) Used as the identifying number for the applicant; and
- (3) Machine and human readable.

Section 4. Applicants shall submit an application form,[and] documents, and fee as required by KRS 237.110 to the department either:

(1) Electronically, using the portal provided and according to the procedures as described on the department's Web site;[f] or

(2) As prescribed in Sections 5 – 11 of this administrative regulation.

Section 5. A sheriff shall issue an application form to an applicant and accept an application fee if:

(1) An applicant meets the requirements established by KRS 237.110(4)(b), (c), and (i);

(2) Unless exempted by KRS 237.110(6) and (7), an applicant has submitted the material required by KRS 237.110(7);

(3) Verification that an applicant is a resident is made by:

(a) Submission of a valid Kentucky operator's license or personal identification card issued by the Transportation Cabinet[a circuit court clerk] pursuant to KRS 186.412;

(b) Personal knowledge of the sheriff; or

(c) Confirmation by another governmental agency;

(4) Verification of an applicant's Social Security number is made by the submission of:

- (a) The applicant's Social Security card; or
- (b) A governmental agency document that contains an applicant's name and Social Security number;
- (5) Verification of an applicant's age is made by submission of:
  - (a) An item specified by subsection (3) of this section; or
  - (b) A birth certificate or other evidence of birth issued by a governmental agency; and
- (6) Verification of an applicant's U.S. immigration status is made by submission of a completed CCDW License Citizenship/Immigration Status Affidavit (KSP 131) if the applicant has indicated on the application form that the applicant is not a U.S. citizen.

Section 6.~~[Section 5.]~~ An applicant who is exempt from the training requirement established by KRS 237.110(4)(i) shall submit documentation establishing that he or she:

- (1)(a) Was a peace officer on the date of his or her retirement; and
- (b) Is a member of a retirement system specified by KRS 237.110(6)(a);
- (2) Is currently certified as a peace officer by the Kentucky Law Enforcement Council pursuant to KRS 15.380 to 15.404; ~~[-or]~~
- (3) Is a current or retired peace officer of one (1) of the federal agencies listed in KRS 237.110(6)(b);
- (4) Is a current or retired corrections officer who was employed by and received the prescribed training from the agencies listed in KRS 237.110(6)(c); or**
- (5) Is an active or honorably discharged service member of the branches listed in KRS 237.110(6)(d) and completed handgun training from that branch.**

Section 7.~~[Section 6.]~~ Completion of Application Form. An applicant shall:

- (1) Complete an application at a sheriff's office;
- (2) Sign the application in the applicant signature block of the application form in ink in the presence of a sheriff;
- (3) Provide the information required by KRS 237.110(7)(a) through (e) on the application form;
- (4) Not fold or tear the form;
- (5) Use a black ink pen to complete the form;
- (6) Not mark or otherwise make an entry in the "For Sheriff's Dept. Use Only" portion;
- (7) Fill each bubble completely;
- (8) Fill in or enter information, as appropriate, within a column block or bubble;
- (9) Write within the constrained areas; and
- (10) Use upper case (capital) letters.

Section 8.~~[Section 7.]~~ The sheriff shall complete the lower right hand portion of the application form titled "For Sheriff's Dept. Use Only" by:

- (1) Completing the ORI Number;
- (2) Filling in the date of application;
- (3) Indicating if the applicant is an active or retired peace officer or a judicial officer in accordance with KRS 527.020(5)(a)1. to 7.4.;
- (4) Indicating if the applicant is an active or honorably discharged service member;** and
- (5) [(4)]** Signing in the portion labeled "Authorizing Official Signature."

Section 9.~~[Section 8.]~~ If an applicant fails to follow the instructions for completion of an application, the sheriff shall:

- (1) Destroy the improperly completed application; and
- (2) Require the applicant to complete a new application form.

Section 10.~~[Section 9.]~~ The sheriff shall place the following material in a single applicant packet:

- (1) The applicant's completed application form;
- (2) A photograph of the applicant complying with the provisions of 502 KAR 11:020;
- (3) The CCDW License Citizenship/Immigration Status Affidavit (KSP 131) if the applicant has indicated on the application form

that the applicant is not a U.S. citizen;

(4)(a) A photocopy of the certificate of completion,~~[or notarized affidavit of completion,]~~ of the training or safety course or class required by KRS 237.110(4)(i); or

(b) Material provided by an applicant to the sheriff establishing that the applicant is exempt from the training requirement on the grounds that he or she is:

- 1. Currently certified as a peace officer by the Kentucky Law Enforcement Council pursuant to KRS 15.380 to 15.404;
- 2. A current or retired peace officer of one of the federal agencies listed in KRS 237.110(6)(b) and successfully completed the basic law enforcement training course required by that agency; or

3. A retired peace officer and is a member of a retirement system specified in KRS 237.110(6)(a) ~~[-(c) and (d)].~~ ~~[-and]~~

**4. A current or retired corrections officer who was employed by and received the prescribed training from the agencies listed in KRS 237.110(6)(c); or**

**5. An active or honorably discharged service member of the branches listed in KRS 237.110(6)(d) and completed handgun training from that branch; and**

(5) Material provided by an applicant to the sheriff establishing that the applicant is exempt from payment of the application fee pursuant to KRS 237.110(7).

Section 11.~~[Section 10.]~~ (1) The sheriff shall mail single applicant packets to the department in a bulk mailer.:

- (a) In a bulk mailer; and
  - (b) On dates established by the "CCDW – LEOSA Application Mailing Schedule for Sheriffs."
- (2) The sheriff shall pay the cost of mailing a bulk mailer.

Section 12.~~[Section 11.]~~ (1) If the department issues an original license pursuant to KRS 237.110(4), it shall:

- (a) Transmit the license to the sheriff; and
- (b) Send a notice~~[an Issuance Notice]~~ to the applicant ~~;~~ **1.** Informing him or her that the license is being conveyed to the sheriff of the county where the applicant resides and what date the license will be available from the sheriff; **and**
- 2. Including a section that the applicant may sign in the presence of the sheriff or the sheriff's designee.**

- (2) The sheriff shall issue the license to the applicant upon:
  - (a) Verification of the identity of the applicant by:
    - 1. Submission of a valid Kentucky operator's license or personal identification card issued by the Transportation Cabinet~~[a circuit court clerk]~~ pursuant to KRS 186.412; or
    - 2. Personal knowledge of the sheriff; and
  - (b) Signature on the notice of issuance~~[-Notice]~~ by the applicant in the presence of the sheriff or the sheriff's designee.

Section 13.~~[Section 12.]~~ Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) **"Commonwealth of Kentucky Carry Concealed Deadly Weapons/LEOSA: Application for License", September 2022; and**
- (b) ["Commonwealth of Kentucky Carry Concealed Deadly Weapons/LEOSA: Application for License", November 2009;**
- (b) "CCDW – LEOSA Application Mailing Schedule for Sheriffs", July 2006;**
- (c) KSP Form 131, "CCDW License Citizenship/Immigration Status Affidavit", [KSP 131, January 2011] edition;** and
- (d) "Issuance Notice," December 2008.**

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Kentucky State Police, Criminal Identification and Records Branch, 1266 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

**(3) This material is also available on the department's Web site at <https://kentuckystatepolice.org/ccdw/ccdw-home/forms/>.**

CONTACT PERSON: Amy Barker, Assistant General Counsel, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-

8207, fax (502) 564-6686, email [Justice.RegContact@ky.gov](mailto:Justice.RegContact@ky.gov).

**JUSTICE AND PUBLIC SAFETY CABINET  
Department of State Police  
(As Amended at ARRS, September 13, 2022)**

**502 KAR 11:060. License denial and reconsideration process.**

RELATES TO: KRS 237.110

STATUTORY AUTHORITY: KRS 16.080(1). [~~17.080~~]  
237.110(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.110(9) requires the department to deny an application for a license to carry a concealed deadly weapon if an applicant fails to meet the statutory requirements for licensure and to reconsider its denial of an application upon the applicant's submission of documentation relating to the application. KRS 16.080(1) authorizes the commissioner to promulgate administrative regulations necessary for the governing and operation of the department. This administrative regulation establishes the procedures for denial, notification of denial, and reconsideration.

Section 1. (1) If the department determines that it will deny an application for a license because an applicant fails to meet criteria specified in KRS 237.110(3) or (4), the department shall notify the applicant of the denial.

(2) The denial notice shall include:

(a) The reason the license is denied;

(b) A section that the applicant may sign to request reconsideration of the denial; and

(c) A statement [on a Denial Notice];

(1) Of The reason the license is denied; and

(2)] that the applicant may request reconsideration by the department by signing the request for reconsideration section, as provided in the notice of denial [completing the "Request for Reconsideration" Section of the Denial Notice] in the presence of the sheriff within thirty (30) days of the date of the notice of denial of license [Denial Notice].

Section 2. If an applicant submits a request for reconsideration of the denial of a license [completes the Request for Reconsideration Section of the Denial Notice], the sheriff shall:

(1) Place the signed notice of denial [completed Denial Notice] and related material, if applicable, in a single applicant packet; and

(2) Transmit the completed single applicant packet to the department [on the date established by the CCDW-LEOSA Application Mailing Schedule For Sheriffs].

Section 3. The department may require the applicant to submit any of the following in support of his or her request for reconsideration:

(1) Certified copies of records from a court clerk or law enforcement agency showing the disposition of criminal charges against the applicant;

(2) A certificate or statement from a court clerk or law enforcement agency showing that the applicable records have been destroyed or are otherwise unavailable;

(3) A certificate or statement from the appropriate department of the Armed Forces or other government agency showing the disposition of charges against the applicant;

(4) A certificate or statement from the appropriate department of the Armed Forces showing the nature of the applicant's discharge or separation from the Armed Forces;

(5) A notarized statement by the applicant setting forth the disposition of criminal charges against the applicant;

(6) A notarized statement by the applicant setting forth the nature of the applicant's discharge or separation from the Armed Forces;

(7) A notarized statement by the applicant setting forth the identity of the victim of the criminal offense, the nature of the applicant's relationship to the victim at the time of the offense, and

whether or not the applicant and the victim shared a child in common at the time of the offense; or

(8) Any other documentation relevant to evaluating the request for reconsideration.

Section 4. If the department determines that the request for reconsideration is valid and that the applicant is not disqualified from being issued a license, it shall issue a license as set forth in 502 KAR 11:010, Section 12 [~~11~~].

Section 5. If the department determines that the request for reconsideration of the denial of the application should be denied, the department shall notify the applicant of the denial by mail.

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

(a) "Denial Notice", 1/9/07; and

(b) "CCDW-LEOSA Application Mailing Schedule For Sheriffs", July 2006.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of State Police, 4250 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

CONTACT PERSON: Amy Barker, Assistant General Counsel, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, email [Justice.RegContact@ky.gov](mailto:Justice.RegContact@ky.gov).

**JUSTICE AND PUBLIC SAFETY CABINET  
Department of State Police  
(As Amended at ARRS, September 13, 2022)**

**502 KAR 11:070. License revocation and suspension notice and reinstatement process.**

RELATES TO: KRS 237.110

STATUTORY AUTHORITY: KRS 16.080(1). [~~17.080~~]  
237.110(13)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.110(13)(a) requires the commissioner of the department to revoke a license to carry a concealed firearm or other deadly weapon if a [the] licensee becomes permanently ineligible to be issued a license or have a license renewed under the criteria established by KRS 237.110. KRS 237.110(13)(b) requires the commissioner of the department to suspend a license to carry a concealed firearm or other deadly weapon if the licensee becomes temporarily ineligible to be issued a license or have a license renewed under the criteria established by KRS 237.110. KRS 16.080(1) authorizes the commissioner to promulgate administrative regulations necessary for the governing and operation of the department. This administrative regulation establishes the procedures for the revocation or suspension of a license to carry a concealed deadly weapon and for reinstatement of a revoked or suspended license.

Section 1. (1) If the department determines that it will revoke a license, the department shall notify the licensee on a Revocation Notice [of the revocation]. following:

(2) The revocation notice shall include:

(a) [(1)] The [Of the] reason for the revocation;

(b) [(2)] That the licensee is required to surrender his or her license to the sheriff of his or her county of residence within two (2) business days of the receipt of the revocation notice;

(c) [(3)] That failure of the licensee to surrender a revoked license is a Class A misdemeanor;

(d) A section that the licensee may sign to request reconsideration of the revocation; and

(e) [(4)] A statement that the licensee may request reconsideration of the revocation by the department by signing the request for reconsideration section, as provided in the notice of revocation [completing the Request for Reconsideration Section of the Revocation Notice] in the presence of the sheriff within thirty

(30) days of the date of the notice of revocation[Revocation Notice].

Section 2. (1) If the department determines that it will suspend a license, the department shall notify the licensee[on a Suspension Notice] of the suspension, following:

(2) The suspension notice shall include:

(a)[(1)] The[Of the] reason for the suspension;

(b)[(2)] That the licensee is required to surrender his or her license to the sheriff of his or her county of residence within two (2) business days of the receipt of the suspension notice;

(c)[(3)] That failure of the licensee to surrender a suspended license is a Class A misdemeanor;

(d) A section that the licensee may sign to request reconsideration of the suspension; and

(e)[(4)] A statement that the licensee may request reconsideration of the suspension by the department by signing the request for reconsideration section, as provided in the notice of suspension[completing the Request for Reconsideration Section of the Suspension Notice] in the presence of the sheriff within thirty (30) days of the notice of suspension[date of the Suspension Notice].

Section 3. If a licensee signs[completes] the request for reconsideration section[Request for Reconsideration Section] of the revocation notice[Revocation Notice] or the notice of suspension[Suspension Notice], the sheriff shall:

(1) Place the signed revocation notice or notice of suspension[completed Revocation Notice or the Suspension Notice] and related material, if applicable, in a single applicant packet; and

(2) Transmit the completed single applicant packet to the department[on the date established by the CCDW-LEOSA Application Mailing Schedule For Sheriffs].

Section 4. The department may require the licensee to submit any of the following in support of his or her request for reconsideration:

(1) Certified copies of records from a court clerk or law enforcement agency showing the disposition of criminal charges against the licensee;

(2) A certificate or statement from a court clerk or law enforcement agency showing that the applicable records have been destroyed or are otherwise unavailable;

(3) A certificate or statement from the appropriate department of the Armed Forces or other government agency showing the disposition of charges against the licensee;

(4) A certificate or statement from the appropriate department of the Armed Forces showing the nature of the licensee's discharge or separation from the Armed Forces;

(5) A notarized statement by the applicant setting forth the disposition of criminal charges against the licensee;

(6) A notarized statement by the licensee setting forth the nature of the licensee's discharge or separation from the Armed Forces;

(7) A notarized statement by the licensee setting forth the identity of the victim of the criminal offense, the nature of the licensee's relationship to the victim at the time of the offense, and whether or not the licensee and the victim shared a child in common at the time of the offense; or

(8) Any other documentation relevant to evaluating the request for reconsideration.

Section 5. If the request for reconsideration of the revocation or suspension is denied, the department shall:

(1) Notify the licensee by mail; and

(2) Inform the licensee of his or her right to petition the commissioner of the Kentucky State Police for reinstatement by requesting an administrative hearing pursuant to KRS Chapter 13B within thirty (30) days of the date of the denial letter.

Section 6. License Expiration Date. If a license is revoked or suspended, the date of its expiration shall not be extended.

Section 7. Reinstatement. (1) A revoked or suspended license shall be reinstated by the department upon:

(a) Receipt of an order from the appropriate court to terminate the revocation or suspension;

(b) Determination by the department to reinstate the license after a request for reconsideration of the revocation or suspension; or

(c) Receipt of an order from the appropriate KRS Chapter 13B hearing officer to return the license and abrogate the suspension or revocation.

(2) If a license is reinstated, the department shall notify the applicant.

[Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Revocation Notice", 1/9/07;

(b) "Suspension Notice", 1/9/07; and

(c) "CCDW-LEOSA Application Mailing Schedule For Sheriffs," 07/06.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of State Police, 1250 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

CONTACT PERSON: Amy Barker, Assistant General Counsel, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, email Justice.RegContact@ky.gov.

## KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM

Kentucky Fire Commission  
(As Amended at ARRS, September 13, 2022)

### 739 KAR 2:070. Volunteer fire department loan fund.

RELATES TO: KRS 95A.262(4), (5), (13), (14)

STATUTORY AUTHORITY: KRS 95A.240, 95A.262

NECESSITY, FUNCTION, AND CONFORMITY: KRS 95A.240 authorizes the Kentucky Fire Commission to promulgate administrative regulations to facilitate the administration of the fund and further the purposes of KRS 95A.200 to 95A.300.

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 establishes/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 firefighting 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.]



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~~[(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" ~~is~~~~means commission as~~ defined by KRS 95A.210~~(1)~~.

(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" ~~is~~~~as~~ defined by KRS 95A.210~~(5)~~~~(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 ~~items such as, 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.

~~(15)~~~~(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 ~~that~~ continue to be 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:

- The acquisition of apparatus equipment;
- The acquisition of communication equipment;
- The acquisition of accessory equipment or protective equipment;
- The construction of new facilities;
- The modernization of existing facilities; and
- 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:

- Operating expenses;
- For payment of fees for the designing or planning of facilities or preparation of application; or
- 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. ~~If~~~~[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 ~~shall~~~~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 firefighting 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, 815 KAR 7:120, the Americans with Disabilities Act, 42 U.S.C. 12101 et seq., 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;~~and[.]~~

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 C.F.R. Part 0 et seq. 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", ~~September~~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.~~ This material is also available on the agency's Web site at [https://kyfirecommission.kctcs.edu/about/forms\\_and\\_regulations.aspx](https://kyfirecommission.kctcs.edu/about/forms_and_regulations.aspx).

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](mailto:administrativeregulations@wgmfirm.com).

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET**  
**Department of Workforce Investment**  
**(As Amended at ARRS, July 14, 2022 and September 13, 2022)**

**787 KAR 2:040. Local workforce development area governance.**

RELATES TO: KRS 151B.017(4)~~[151B.020(6)]~~, 29 U.S.C. 3101 et seq., 20 C.F.R. 679.130

STATUTORY AUTHORITY: KRS 151B.017(4)~~[151B.020(6)]~~ NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.017(4)~~[151B.020(6)]~~ requires the secretary of the Education and Workforce Development Cabinet to promulgate administrative regulations that are necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds, and that are necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. This administrative regulation establishes the membership criteria and operating guidelines for local workforce development boards, requires interlocal and partnership agreements for local workforce development areas, establishes the process for the identification of regions and designation of local workforce development areas, establishes the guidelines for the hiring of staff by local workforce development boards, ~~[and] requires a written agreement for entities that perform multiple functions in a local workforce development area under the Workforce Innovation and Opportunity Act, 29 U.S.C. 3101 et seq., and addresses dissemination and implementation of policies and guidance issued by the Kentucky Workforce Innovation Board. [In addition to the minimum federal requirements set forth in 29 U.S.C. 3122,]~~ This administrative regulation ~~establishes~~provides further guidance and clarification, in addition to the minimum federal requirements established in 29 U.S.C. 3122, necessary for effective local implementation activities.

Section 1. **Definition. "Workforce Innovation and Opportunity Act" or "WIOA" means 29 U.S.C. 3101 et seq.**

**Section 2.** Local Workforce Development Board Membership Criteria and Operating Guidelines. Each chief local elected official in a local workforce development area shall appoint members to the local workforce development board and each local workforce development board shall operate in compliance with the Workforce Innovation and Opportunity Act (WIOA).

**Section 3.[Section 2.]** Interlocal Agreement. Each local elected official of a unit of general local government within a local workforce development area shall jointly execute a written interlocal agreement that, at a minimum, complies with the Workforce Innovation and Opportunity Act.

**Section 4.[Section 3.]** Partnership Agreement. Each chief local elected official, representing the local elected officials in a local workforce development area, and each designated chair, representing the local workforce development board, shall jointly execute a written partnership agreement that, at a minimum, complies with the Workforce Innovation and Opportunity Act.

**Section 5.[Section 4.]** Identification of Regions and Designation of Local Workforce Development Areas. The process and procedures for the identification of regions and the designation of local workforce development areas within the Commonwealth of Kentucky shall be in compliance with WIOA.

**Section 6.[Section 5.]** Hiring of Staff for Local Workforce Development Boards. Local workforce development boards may hire a director and other staff in accordance with WIOA.

**Section 7.[Section 6.]** Entities Performing Multiple Functions in A Local Workforce Development Area. Entities that have been selected or otherwise designated to perform more than one (1) function in a local workforce development area shall develop a written agreement that, at a minimum, complies with WIOA.

**Section 8.[Section 7.]** Dissemination and Implementation of Policies and Guidance issued by the Kentucky Workforce Innovation Board. The local workforce development boards shall implement and disseminate policies, guidance, and manuals issued by the Kentucky Workforce Innovation Board, in coordination with the Governor and the Department of Workforce Investment, pursuant to the Workforce Innovation and Opportunity Act and 20 C.F.R. 679.130. Nothing in this section shall be construed to prohibit coordination between the Kentucky Workforce Innovation Board and the Kentucky Education Workforce Collaborative~~[accompanying Code of Federal Regulations].~~

CONTACT PERSON: Honor Barker, Deputy Commissioner, Department of Workforce Investment, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, phone (502) 782-3746, email [honor.barker@ky.gov](mailto:honor.barker@ky.gov).

**EDUCATION AND LABOR CABINET**  
**Kentucky Commission on Proprietary Education**  
**(As Amended at ARRS, September 13, 2022)**

**791 KAR 1:010. Applications, permits, and renewals.**

RELATES TO: KRS 165A.330, 165A.350(3), 165A.360(1), (2), (7), (9), 367.110-367.360

STATUTORY AUTHORITY: KRS 165A.340(6), 165A.350(3), 165A.360(2), 165A.400

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.340(6) and 165A.400 authorize the Kentucky Commission on Proprietary Education to promulgate administrative regulations to administer and enforce the provisions of KRS Chapter 165A. KRS 165A.350(3) and 165A.360(2) require the commission to establish

forms. This administrative regulation establishes the application requirements and incorporates forms by reference.

Section 1. Initial Licensure Application and Student Protection Fund Contribution for Schools. (1) A school residing in and doing business in Kentucky shall submit:

- (a) Form PE-15, Application for Resident School; and
  - (b) The initial contribution to the student protection fund required by 791 KAR 1:025, Section 2.
- (2) A school not residing in Kentucky, but seeking to do business in Kentucky, shall submit:
- (a) Form PE-16, Application for Non-Resident School; and
  - (b) The initial contribution to the student protection fund required by 791 KAR 1:025, Section 2.

Section 2. Annual Renewal License Application for Schools. (1) The annual renewal license application for a school residing in and doing business in Kentucky shall be the Form PE-17, Application for License Renewal Resident School.

(2) The annual renewal license application for a school not residing in Kentucky, but doing business in Kentucky, shall be the Form PE-18, Application for License Renewal Non-Resident School.

- (3) Each school shall:
  - (a) List each program for which it is approved, including the Classification of Instructional Programs (CIP) code, the number of contact or credit hours for the program, the length of the program, and the cost of the program;
  - (b) Provide a copy of:
    - 1. Its enrollment agreement noting each item that is required by KRS Chapter 165A;
    - 2. a. Its most recent audited financial statement, if the school is accredited; or
    - b. Its most recent financial income statement certified by an independent accountant, if the school is not accredited;
    - 3. Its faculty and personnel handbook;
    - 4. Its current catalog, certified, true, and correct in content;
    - 5. Any advertising and marketing materials utilized by the school;
    - 6. Its occupational license and current fire inspection report;
    - 7. Its organizational chart for each school; and
    - 8. Its certificate of accreditation, if accredited; and
  - (c) Submit a Form PE-11, Form for Instructional Staff and Key Administrative Personnel.

Section 3. Permit Application for Agents. The permit application for each agent of a school licensed by the commission shall be the Form PE-19, Application for Permit to Act as an Agent, to seek initial approval with the commission, and the Form PE-20, Application for Renewal of Permit to Act as an Agent, to seek renewal with the commission annually.

Section 4. Transfer of Ownership of a School. The application for recording a transfer of ownership of a school licensed by the commission shall be the Form PE-21, Application to Transfer Ownership of a School.

Section 5. Change of Name of a School. The application for approval of a change of name of a school shall be the Form PE-22, Application to Change the Name of a School.

Section 6. Change of Location of a School. The application for approval of a change of location of a school shall be the Form PE-23, Application to Change the Location of a School.

Section 7. Application to Award an Associate Degree. The application to award an associate degree shall be the Form PE-10, Application to Award an Associate Degree.

Section 8. New Program. The application for approval of a new certificate or diploma program shall be the Form PE-14, Application for a New Program.

Section 9. Request for Transcript. The request for a transcript from a closed school shall be the Form PE-28, Request for Transcript.

Section 10. Revision of an Existing Certificate, Diploma, or Associate Degree Program. (1)(a) The school shall submit written notification detailing cumulative curriculum changes in contact hours, credit hours, courses offered, or program length of a currently approved program, totaling less than twenty-five (25) percent within a twelve (12) month period to the commission on a Form PE-12, Notification to Revise an Existing Program for Less Than 25%.

(b) A change in the name of an existing program that does not change the overall objective of the program shall not be considered in the computation of the cumulative curriculum changes.

(2)(a) A school shall submit a Form PE-13, Application to Revise an Existing Program for 25% or More, to the commission if cumulative curriculum changes in contact hours, credit hours, courses offered, or program length of a currently approved program total twenty-five (25) percent or more within a twelve (12) month period.

(b) A change in the name of an existing program that changes the overall objective of the program shall be considered in the computation of the cumulative curriculum changes.

(3) A school shall notify the commission in writing of the program name changes, course name changes, or course description changes.

Section 11. (1) Beginning in 2016 and every year thereafter, the school shall report its job placement rate per licensed program to the commission by January 15, and shall be the Form PE-39, Job Placement Reporting.

(2) The job placement rate in the field of study for the program shall be calculated as follows:

(a) Determine the total number of students who, during the immediately preceding July 1-June 30 period, graduated from the program;

(b) Of the total number determined under paragraph (a) of this subsection, determine the number of graduates who the school has documented as not available for employment due to health-related issues for individual or family member, death, active military duty, spouse or dependent of military personnel relocated due to military transfer, incarceration, visa restrictions, or continuing education at least half-time;

(c) Subtract the total number of graduates not available for employment in paragraph (b) of this subsection from the total number of graduates under paragraph (a) of this subsection. This difference shall be the denominator for the equation;

(d) Of the total number determined under paragraph (c) of this subsection, determine the number of graduates who obtained job placement in a position in the field of study, in accordance with subsections (10) and (11) of this section. This shall be the numerator for the equation; and

(e) Divide the number of students determined under paragraph (d) of this subsection by the difference found in paragraph (c) of this subsection. This quotient converted to a percentage shall be the job placement rate.

(3) For purposes of the job placement rate calculation, the school shall obtain the placement data by contacting employers or graduates to obtain the relevant information under the definitions in subsections (10) and (11) of this section. This contact and information shall be documented in writing, and shall include:

- (a) Name of the employer;
- (b) Name of the graduate;
- (c) Addresses and telephone numbers of graduate and employer;
- (d) Title of employment;
- (e) Duties of employment;
- (f) Length of employment;
- (g) Total hours worked per pay period;
- (h) Name and title of the person or persons[person(s)] providing the information to the school;
- (i) Name and title of the person or persons[person(s)] at the

school who received and recorded the information;

(j) The date the information was provided; and

(k) Statement whether the school designated the graduate as placed in field or not.

(4) If the school obtains the relevant information by telephone or personal contact, as opposed to a written document, the school shall send a confirming letter to the provider of the information setting forth in specific detail the information provided and the date it was provided. The school shall maintain a copy of the confirming letter and evidence it was sent.

(5) All data and information used by a school to support the job placement rate, including any information that the graduate is not available for employment, shall be reliable, verifiable, and documented in writing.

(6) Documentation supporting job placement rates for each applicable period for each program shall be maintained by the school in a retrievable and well-organized manner.

(7) The job placement rates calculated by the school and the underlying documentation shall be subject to review and audit by the commission, and the school shall pay any costs for a review and audit. This may include requiring the school to:

(a) Submit graduate data to the Kentucky Center for [Education and Workforce] Statistics to include a graduate's name, date of birth, Social Security number, gender, ethnicity, residency at point of graduation, and the CIP code and level of the program from which the student graduated; and

(b) Have a certified public accountant report on the school's calculation based on performing an attestation engagement in accordance with the Statements on Standards for Attestation Engagements of the American Institute of Certified Public Accountants (AICPA) available at [www.aicpa.org](http://www.aicpa.org).

(8) Another state agency shall not be prevented from investigating, reviewing, or auditing the underlying documentation and the rates provided, [pursuant to 791 KAR Chapter 1, KRS Chapter 165A, or the Kentucky Consumer Protection Act, KRS 367.110-367.360.]

(9) A school that operates a program that is intended to and only provides continuing education courses to attendees for the purpose of the attendee maintaining current licensure shall so certify to the commission. The school shall also obtain written statements from all attendees affirming that the person's purpose in attending courses offered by the school is to maintain current licensure. The school's certification to the commission and underlying written affirmations shall suffice for the calculation of job placement rates for that continuing education program.

(10) The conditions described in this subsection shall be required to qualify as job placement in a position in field of study.

(a) Within 180 days of graduating from the program, the graduate shall have been employed for at least thirty (30) days with the employer in a full-time paid position in the field of study and the school shall document this employment.

(b) If a license or certification is required or generally requested for positions in the occupation, then within 180 days after the results are available from the first exam that the graduate would have been able to take after completing the program, the graduate shall have been employed for at least thirty (30) days with the employer in a full-time paid position in the field of study.

(c) In addition to paragraph (a) or (b) of this subsection, for a part-time position in the field of study to be considered job placement, the school shall possess a handwritten statement from the graduate at time of completion that part-time employment is the graduate's objective for employment including a general explanation for this objective.

(d) For self-employment to be considered as job placement, the school shall possess a handwritten statement from the graduate describing:

1. The work and demonstrating that it is in a position in the field of study;

2. That the graduate has received compensation in return for services provided in connection with the self-employment; and

3. That the graduate has completed at least 675 hours of work in connection with the graduate's self-employment, including time spent marketing the business, cultivating clients, negotiating

contracts, and initiating or completing the work.

(11) The conditions described in this subsection shall be required to qualify as a position in field of study.

(a) The graduate's employment shall be a position included in the most recent National Center for Education Statistics and U.S. Bureau of Labor Statistics CIP-SOC Crosswalk for the program studied identified by the six (6) digit U.S. Department of Education classification of instructional program code, and the routine work shall predominantly require using the core skills and knowledge expected to have been taught in the program and the position shall require education beyond high school level.

(b) If graduates are continuing in prior employment, the graduate's prior employment position shall be reasonably related to the program training and the graduate shall attest in the graduate's handwriting when enrolling in the program and upon completion of the program, with reference to a specific written policy of the employer, to the benefit of the training as a catalyst for maintaining or advancing in a position.

(12) Failure to comply with this section shall be grounds for denial of a license, or suspension or revocation of an existing license.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form PE-15, "Application for Resident School", as provided in EDvera software version 2.1, edition May 2022[2021][Form PE-15, 2017];

(b) Form PE-16, "Application for Non-Resident School", as provided in EDvera software version 2.1, edition May 2022[2021][Form PE-16, 2017];

(c) Form PE-17, "Application for License Renewal Resident School", as provided in EDvera software version 2.1, edition May 2022[2021][Form PE-17, 2017];

(d) Form PE-18, "Application for License Renewal Non-Resident School", as provided in EDvera software version 2.1, edition May 2022[2021][Form PE-18, 2017];

(e) Form PE-11, "Form for Instructional Staff and Key Administrative Personnel", as provided in EDvera software version 2.1, edition May 2022[2021][Form PE-11, 2017];

(f) Form PE-19, "Application for Permit to Act as an Agent", as provided in EDvera software version 2.1, edition May 2022[2021][Form PE-19, 2017];

(g) Form PE-20, "Application for Renewal of Permit to Act as an Agent", as provided in EDvera software version 2.1, edition May 2022[2021][Form PE-20, 2017];

(h) Form PE-21, "Application to Transfer Ownership of a School", as provided in EDvera software version 2.1, edition May 2022[2021][Form PE-21, 2017];

(i) Form PE-22, "Application to Change the Name of a School", as provided in EDvera software version 2.1, edition May 2022[2021][Form PE-22, 2017];

(j) Form PE-23, "Application to Change the Location of a School", as provided in EDvera software version 2.1, edition May 2022[2021][Form PE-23, 2017];

(k) Form PE-10, "Application to Award an Associate Degree", as provided in EDvera software version 2.1, edition May 2022[2021][Form PE-10, 2017];

(l) Form PE-14, "Application for a New Program", as provided in EDvera software version 2.1, edition May 2022[2021][Form PE-14, 2017];

(m) Form PE-28, "Request for Transcript", May 2022[as provided in EDvera software version 2.1, edition 2021][PE-28, 2017];

(n) Form PE-12, "Notification to Revise an Existing Program for Less Than 25%", as provided in EDvera software version 2.1, edition May 2022[2021][Form PE-12, 2017];

(o) Form PE-13, "Application to Revise an Existing Program for 25% or More", as provided in EDvera software version 2.1, edition May 2022[2021][Form PE-13, 2017]; and

(p) Form PE-39, "Job Placement Reporting", as provided in EDvera software version 2.1, edition May 2022[2021][Form PE-39, 2017].

(2) This material may be inspected, copied, or obtained,

subject to applicable copyright law, at the Kentucky Commission on Proprietary Education, 500 Mero Street, 4<sup>th</sup> Floor~~[300 Sower Boulevard]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. **This material is also available on the commission's Web site at [www.kcpe.ky.gov](http://www.kcpe.ky.gov).**

CONTACT PERSON: Misty Edwards, Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-564-4185, email [kcpe@ky.gov](mailto:kcpe@ky.gov).

**EDUCATION AND LABOR CABINET  
Kentucky Commission on Proprietary Education  
(As Amended at ARRS, September 13, 2022)**

**791 KAR 1:020. Standards for licensure.**

RELATES TO: KRS 165A.310(5), 165A.330, 165A.340, 165A.350, 165A.360, 165A.370(1), 165A.390, 165A.450

STATUTORY AUTHORITY: KRS 165A.340(6), 165A.360(2), (7), 165A.400

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.340(6) and 165A.400 authorize the Kentucky Commission on Proprietary Education to promulgate administrative regulations to administer the provisions of KRS Chapter 165A. KRS 165A.360(2) requires the commission to establish application forms and fees. KRS 165.360(7) authorizes the commission to promulgate administrative regulations requiring supporting documentation to accompany application. This administrative regulation establishes the application requirements and **licensure standards**~~[incorporates forms by reference]~~.

Section 1. A school shall meet the requirements and standards established in this section in order to be licensed. (1) Financial requirements. The school shall adhere to generally accepted accounting practices and present evidence of financial stability, including the following:

- (a) Financial statements required by 791 KAR 1:010;
- (b) The name and contact information of the bank or other financial institution used by the school as a reference;
- (c) Good standing with the Kentucky Higher Education Assistance Authority related to programs administered by that agency and from the U.S. Department of Education related to programs administered by that department; and
- (d) A school surety bond or other collateral, in accordance with KRS 165A.360 and 791 KAR 1:150, and agent surety bond or other collateral, in accordance with KRS 165A.350 and 791 KAR 1:150.

(2) Accreditation.

(a) If a school is accredited by an accrediting agency recognized by the U.S. Department of Education, it shall furnish information regarding its accreditation status.

(b) If a school is not accredited by an accrediting agency recognized by the U.S. Department of Education, it shall furnish a statement indicating if, when, and from whom the school will seek accreditation.

(c) A school shall not:

- 1. Be the subject of an interim action by a state agency potentially leading to the suspension, revocation, or termination of the institution's legal authority to provide postsecondary education;
- 2. Have had its state license suspended, revoked, or terminated, even if the required due process procedures have not been completed;
- 3. Have been denied candidacy or accreditation by an accrediting agency;
- 4. Have voluntarily withdrawn its candidacy or accreditation while not in good standing from an accrediting agency;
- 5. Have had its candidacy or accreditation withdrawn or been placed on public probation by an accrediting agency;
- 6. Be the subject of an interim action by an accrediting agency potentially leading to the suspension, revocation, or withdrawal of candidacy or accreditation; or

7. Have been notified of the loss of any agency's accreditation even if the due process procedures have not been completed.

(3) Agents. A school shall be responsible for the actions of its agent when the agent is acting on behalf of the school. An agent shall have an agent permit and agent bond, in accordance with KRS 165A.350 and 791 KAR 1:150 and shall comply with KRS 165A.330.

(4) Personnel requirements.

(a) The school shall furnish information regarding the administrative officer, the directors, the owners, and the instructors on the Form PE-11, Form for Instructional Staff and Key Administrative Personnel, incorporated by reference in 791 KAR 1:010.

(b) The chief administrator shall be qualified pursuant to KRS 165A.370(1)(d).

(c) Each qualifying degree possessed by personnel shall be from an institution accredited by an accrediting agency recognized by the U.S. Department of Education or the Council for Higher Education Accreditation.

(d) Verification of credentials. A school shall maintain official transcripts for credentials that qualify instructors to teach their assigned courses and for those credentials that are listed in the catalog. All these credentials shall be on file in the administrative offices at the campus location nearest to where the instructor is primarily employed.

(e) A principal party, owner, or administrator involved with the school shall not have had a felony conviction involving moral turpitude, fraud, or a capital crime.

(f) Instructor qualifications. To teach, an instructor shall comply with KRS 165A.370(1)(e). Appropriate training or experience related to the responsibilities of the position shall include a high school diploma or GED along with one (1) or more of the following:

- 1. Completed a training or degree program in the applicable occupational area;
- 2. Demonstrated outstanding professional experience;
- 3. Demonstrated outstanding professional contributions to the discipline being taught; or
- 4. Professional licensure or certification in the field.

(g) Teaching loads of instructors shall be consistent with recognized educational practices and shall be appropriate to the field, the variety of courses assigned, class size, and other related factors.

(h) Instructor development.

1. A school shall establish instructor development plans including both in-service and professional growth activities to enhance instructor expertise.

2. There shall be documented evidence on an annual basis of these development plans and their implementation.

3. A school shall establish plans that are appropriate given each instructor's training, education, and related work experience and that provide the proper mix of in-service training and professional growth based on the academic and experiential background of the instructor.

(5) Facilities and equipment.

(a) Enrollment shall not exceed the design characteristics of the facilities.

(b) A school shall have facilities and equipment that are:

1. Maintained and operated in compliance with the safety and health requirements set forth in local, city, and county ordinances, and federal and state law; and

2. Adequate and appropriate for instruction in classrooms and laboratories.

(c) If a school has an expansion of a school facility, it shall comply with 791 KAR 1:160.

(d) If a school has multiple campuses, it shall comply with 791 KAR 1:150.

(e) If a school is only seeking licensure with the commission to offer a course or courses not for college credit, and it will not conduct its course or courses at a permanent location, but rather will utilize the facilities of hotels or other public buildings, it shall:

- 1. Notify the commission in writing, at least thirty (30) days in advance of the location where any course will be offered;
- 2. Receive prior approval of the Kentucky Real Estate

Commission, the Kentucky Insurance Commission, the Kentucky Bar Association, or other appropriate official agency or group authorized to approve the course or courses; and

3. Not advertise or promote the course or courses until the commission has received in writing the course content, name and qualification of the instructor, and a copy of the approval to offer the course from an authorizing agency.

(6) Library resources. The library shall be appropriate to support the programs offered by the school in accordance with this subsection.

(a) A school, through ownership or formal agreements, shall provide and support student and instructor access to adequate library collections, and to other learning and information resources where courses and programs are offered. Library resources shall be appropriate to the program level offered by the school, and shall be sufficient to support all educational, research, and public service programs at the school.

(b) A school that does not provide its own library facilities, but instead relies on another institution, shall demonstrate that it has permission to utilize the resources of the other institution, by providing a copy of the written agreement to the commission with the license application, and prior to the offering of any courses.

(c) A school that is dependent on another school or library for library resources shall make the extent of the dependence and the details of the agreements clear both to the commission and to students and instructors.

(d) Library expenditures, expressed as a percentage of the total educational and general budget, shall be consistent with the percentage of library expenditures commonly observed in accredited schools of similar types.

(e) Library staff shall be qualified as required for accredited schools of similar types.

(f) The school shall have sufficient seating and work space for a reasonable proportion of the instructors and students to be accommodated at one (1) time.

(g) The physical environment of the library shall be conducive to reflective intellectual pursuits common to institutions of higher learning.

(7) Curriculum.

(a) A course offered in a degree program shall be consistent with a course that is generally transferable for credit among accredited schools if the program is at a corresponding degree level, or for credit toward the baccalaureate degree if a program is at the associate degree level. A course may be offered that is not transferable based on the uniqueness of a program that is occupational in nature.

(b) A school shall have a systematic program of curriculum revision in order to maintain the general standards of accredited schools with similar programs.

(c) A school shall have a program of evaluation that includes a periodic assessment of the changes in student achievement.

(d) A school shall offer with sufficient frequency the courses required for each program for the student to complete the program within publicized time frames.

(8) Program supervision and instructional support. Regardless of location, type of program, method of instruction, or other characteristics, an instructional program shall include:

(a) Adequate supervision by the school; and

(b) Other instructional support necessary to maintain the program.

(9) Truth in advertising. A school shall meet the requirements established in this subsection regarding advertising.

(a) Advertisements, announcements, or other materials produced by or on behalf of the school which are distributed in Kentucky shall not contain any statements that are untrue, deceptive, or misleading with respect to the school, its personnel, its services, the content, accreditation status, or transferability of its courses or degree programs.

(b) Advertisements, announcements, or other materials produced by or on behalf of the school shall not indicate that the school is "supervised", "recommended", "endorsed", or "accredited" by the Commonwealth of Kentucky, by the Kentucky Commission on Proprietary Education, or by any other state agency. A

statement using the name of the Kentucky Commission on Proprietary Education, if any, shall be in exactly the following form: "(Name of School) is licensed by the Kentucky Commission on Proprietary Education."

(c) A school shall:

1. Publicly disclose, both in print and Web-based materials, information about its student enrollment, degrees conferred, and job placement rate of program graduates in the field of study as reported to the commission, in accordance with 791 KAR 1:010 and KRS 165A.340(6); and

2. Use numbers most recently reported to the commission in its advertising.

(d) A school shall publicly disclose information about articulation agreements and transfer of credits, in accordance with KRS 165A.340(6)(a)2.c., and shall furnish copies of the articulation agreements and rights and responsibilities of students regarding transfer of credits to the commission.

(e) The commission staff may require that a school furnish proof to the commission of any of its advertising claims. If proof cannot be furnished, a retraction of the advertising claims published in the same format as the claims themselves shall be published by the school and the continuation of the advertising shall be grounds for denial, suspension, or revocation of the school's license.

(10) Recruitment and enrollment procedures. A school shall furnish the following to each prospective student prior to enrollment, and shall require that the student sign and date the school's form to be placed in the student's file, which shall either be part of the enrollment contract or a pre-enrollment checklist verifying that the student received:

(a) The school's most recent catalog including policies on grades, attendance, and conduct;

(b) A description of the instructional program;

(c) A detailed schedule of all charges, rentals, and deposits;

(d) The schedule of refunds of all charges, rentals, and deposits;

(e) The complaint procedures available to students, including the process for filing a complaint with the commission;

(f) Notice of the existence of the student protection fund created in KRS 165A.450; and

(g) The student enrollment application, contract, or agreement.

(11) Student affairs.

(a) Students admitted to the school shall have completed a state-approved secondary school program or its equivalent.

(b) The school shall provide academic advising by instructors or staff to each student at the time of admission and throughout the program.

(c) The school shall make assistance and advising available to each student who completes a technical or vocational program for the purpose of assisting the student with relevant job placement or with transfer.

(d) The school shall maintain sufficient records for each student to provide an understanding of his or her background, to record progress through the instructional program, and for reference purposes.

(e) The school shall comply with recordkeeping requirements, in accordance with KRS 165A.370 and 791 KAR 1:027.

(f) Administrative officers of the school shall be knowledgeable of the federal and state laws and administrative regulations concerning the disclosure of student information and shall comply with those laws and administrative regulations.

(g) A school shall make provision for the maintenance of student records if the school ceases operations. The location of student records shall be approved in advance by the commission in accordance with KRS 165A.390(5). A school shall comply with KRS 165A.450.

(12) School policies.

(a) The school shall maintain records in an orderly manner and make them available for inspection by the commission or its designated representative.

(b) A catalog shall be published and distributed at least every two (2) years and shall include general information, administrative policies, and academic policies of the school including:

1. General information:

a. Official name and address of the school, name of the chief administrative officers, members of the governing body, and names of principal owners;

b. The school's calendar for the period covered by the catalog including beginning and ending dates of each term or semester, registration and examination dates, legal holidays, and other important dates;

c. Names of instructors, including relevant education and experience; and

d. Full disclosure of the philosophy and purpose of the school;

2. Administrative policies:

a. Admissions policies and procedures, applicable to the various programs, including policies regarding granting of credit for previous education;

b. Policies and procedures regarding student conduct and behavior and the process for dealing with cases which culminate in probation or dismissal;

c. Schedules for all tuition and instructional charges refund policy, and schedules for the tuition and instructional charges;

d. Statement of financial aid available to students; and

e. Procedures for obtaining transcripts in a timely fashion and at reasonable cost; and

3. Academic policies:

a. Policy on class attendance;

b. Description of grading system;

c. Description of the degree, diploma, certificate, or other programs, including the course requirements and the time normally required to complete each degree, diploma, certificate, or other program; and

d. Full description of the nature and objectives of all programs offered.

(13) Site visits.

(a) The commission shall conduct site visits in accordance with KRS 165A.370(1) and (2).

(b) The costs of the site visit shall be paid in accordance with 791 KAR 1:025.

(c) The commission may conduct an announced or unannounced site visit of a licensed school during reasonable business hours to inspect the files, facilities, and equipment, as well as conduct interviews to determine the school's compliance with this administrative regulation and KRS Chapter 165A.

(d) Within ninety (90) working days of receipt of a complete application or annual report, the commission may conduct a site visit.

(e) The purpose of a site visit shall be to make an assessment of a school using the standards for licensure as set forth in this administrative regulation.

(f) Failure to provide full access to the school's files, facilities, and equipment, or prevention of interviews, shall be grounds for:

1. Denial of a license; or

2. Suspension or revocation of an existing license.

Section 2. General Standards for Approval of Associate Degree Programs. (1) In addition to meeting the requirements and standards in Section 1 of this administrative regulation, a school requesting consideration for approval to award an associate degree shall:

(a) Have been in operation and licensed in Kentucky or in another jurisdiction whose standards substantially meet or exceed those contained in this administrative regulation, for a continuous period of at least two (2) years immediately preceding the application;

(b) Be accredited by an accrediting agency recognized by the United States Department of Education;

(c) Meet the standards set forth in KRS 165A.370 and this administrative regulation;

(d) File with the commission a completed, signed, and dated **Form PE-10**, Application to Award an Associate Degree [ **Form PE-10** ], incorporated by reference in 791 KAR 1:010;

(e) Pay the fee for application to award an associate degree set forth in 791 KAR 1:025, Section 8;

(f) Ensure that marketing techniques and advertisements shall

not guarantee employment;

(g) Not offer to the public, advertise, or enroll students in a new associate degree program until all necessary forms have been submitted to the commission office for review, and written approval of the application is received from the commission; and

(h) Be inspected by a member of the commission, or commission designee, with prior notification to the school of the date and time of the inspection to determine compliance with KRS 165A.370 and this administrative regulation.

(2) A class in the program shall not commence before the inspection report evidences that the program is in compliance.

Section 3. Associate of Arts Degree or Associate of Science Degree. (1) The granting of an associate of arts degree or associate of science degree shall be limited to a school accredited by an accrediting agency recognized by the U.S. Department of Education.

(2) The associate of arts degree or associate of science degree shall be awarded to a student who has successfully completed a degree program comprised of a minimum of sixty (60) semester credit hours or ninety (90) quarter credit hours of study.

(a) Of the total credit hours, a minimum of thirty (30) semester credit hours or forty-five (45) quarter credit hours, shall be in the appropriate business, technical, or other major field of study as indicated in the program title and description.

(b)1. A minimum of fifteen (15) semester credit hours or twenty-two and one-half (22 1/2) quarter credit hours, shall be required in general education studies.

2. General education studies shall include courses other than the core major offering, including science, mathematics, social and behavioral sciences, and humanities, and shall offer balance to the total program.

Section 4. Specialized Associate Degree. (1) The granting of a specialized associate degree designated as an associate of applied science degree or associate of occupational studies degree is limited to schools accredited by an accrediting agency recognized by the U.S. Department of Education, as a business or specialized school.

(2)(a) The associate of applied science degree or associate of occupational studies degree shall be awarded to a student who has successfully completed a degree program comprised of a minimum of sixty (60) semester credit hours or ninety (90) quarter credit hours.

(b) The degrees shall have at least nine (9) semester hours, thirteen and one-half (13 ½) quarter hours, or its recognized clock hour equivalent in general education or applied general education studies. General education studies shall include courses other than the core major offering, including science, mathematics, social and behavioral sciences, and humanities. Applied general education studies shall include courses that apply to a specific occupation (e.g., technology, medication math, psychology for health professionals, and business math) and also satisfy general education requirements.

Section 5. Additional Standards. (1) An associate degree granting school approved by this commission shall follow the additional standards established in this section.

(a) The library or learning resource center items shall include relevant periodical subscriptions or computer data bases and shall contain professionally accepted references in the field or fields of study which shall be appropriate for the program offered.

(b) The library or learning resource center shall be accessible for all students to use the items and shall provide access to materials at hours other than times classes are being taught.

(c)1. A designated staff member shall be responsible for the library or learning resource center, and sufficient funds for support of the facility and acquisition of library or learning resource center items shall be provided.

2. In determining whether sufficient funds are provided, current student enrollment shall be considered.

(d) All equipment and training aids shall be relevant to the program offered and shall be in sufficient quality and quantity to



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accommodate the current student enrollment.

(e) The school shall provide a listing of the program requirements and prerequisites for the degrees offered.

(f) 1. A catalog shall be printed containing a description for each course that is required or which may be taken to meet the requirements for the degree.

2. The catalog shall include all prerequisites.

(g) All promotional literature and advertising shall appropriately identify the degree offered.

(h) 1. The school shall submit a completed **Form PE-11**, Form for Instructional Staff and Key Administrative Personnel ~~[(Form PE-11)]~~ for each instructor, incorporated by reference in 791 KAR 1:010, to the commission before classes listed on the application begin.

2. Official transcripts, and if applicable, copies of certifications, licenses, and other designations for each instructor in the degree program shall be maintained on file at the school.

(i) The school shall maintain on file a current course syllabus for each course taught.

(j) The school shall maintain on file for the commission or its designee a copy of its last accreditation self-study and correspondence with accrediting agencies.

(2) The school shall make the following materials available to a member of the commission or its designee at the on-site visit:

(a) Promotional literature;

(b) School catalog;

(c) Course syllabi;

(d) Inventory of classroom equipment;

(e) Student files;

(f) Faculty files;

(g) Staff files;

(h) A list of all personnel by position indicating part-time and full-time employees; and

(i) A current organizational chart.

**(3)(a) The school shall provide a Statement of Quality Assurance as determined by the Commission that is placed on school letterhead, signed, notarized, and uploaded electronically to EDvera.**

**(b) The Statement of Quality Assurance shall certify that:**

**1. The school is currently in compliance and shall remain in compliance with KRS Chapter 165A and KAR Title 791, and all applicable state, federal, and local laws; and**

**2. The school shall adhere to the standards required for schools licensed by the Kentucky Commission on Proprietary Education.**

**(c) The Statement of Quality Assurance shall include that the school shall maintain the following and make these available to the commission upon request:**

**1. A listing of each program for which the school is approved, including the Classification of Instructional Programs (CIP) code, the number of contact or credit hours for the program, the length of the program, and the cost of the program;**

**2. A copy of:**

**a. The school's enrollment agreement noting each item that is required by KRS Chapter 165A;**

**b. (i.) Its most recent audited financial statement, if the school is accredited; or**

**(ii.) Its most recent financial income statement certified by an independent accountant, if the school is not accredited;**

**c. Its faculty and personnel handbook;**

**d. Its current catalog, certified, true, and correct in content;**

**e. Any advertising and marketing materials utilized by the school;**

**f. Its occupational license and current fire inspection report;**

**g. Its organizational chart for each school;**

**h. Its certificate of accreditation, if accredited; and**

**3. Form PE-11, Form for Instructional Staff and Key Administrative Personnel, as incorporated by reference in 791 KAR 1:010.**

Section 6. Failure to Meet Standards for Licensure. (1) A school's failure to meet the standards for licensure set forth in this administrative regulation shall be grounds for:

(a) Denial of a license; or

(b) Suspension or revocation of an existing license.

(2) The commission shall notify the school by registered mail, return receipt, of the denial, suspension, or revocation of the school's license.

CONTACT PERSON: Misty Edwards, Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-564-4185, email kcpe@ky.gov.

### EDUCATION AND LABOR CABINET Kentucky Commission on Proprietary Education (As Amended at ARRS, September 13, 2022)

#### 791 KAR 1:025. Fees.

RELATES TO: KRS 165A.350(3), 165A.360(1), (2), (9), **165A.370(1), (2), 165A.380, 165A.475(3), (4), 165A.420**

STATUTORY AUTHORITY: KRS 165A.340(6), (10), 165A.390, 165A.400, 165A.450

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.340(6) and (10), 165A.400, and 165A.450 authorize the commission to promulgate administrative regulations to administer and enforce the provisions of KRS Chapter 165A, including establishment of fees and other charges. This administrative regulation establishes the fees for the Kentucky Commission on Proprietary Education.

Section 1. Definitions. (1) "Actual cost" means the amount sufficient to reimburse the commission for all travel and expenses incurred, including the expense of contract labor, consultant fees, or other miscellaneous expenses necessitated by a site visit or inspection.

(2) "Gross revenue" means the total amount of tuition earned by a school less any tuition refunds to the students during the immediate past school year, July 1 through June 30.

(3) "Transfer of ownership" means any change or transfer in ownership whether or not the change results in a change of control.

Section 2. Initial Licensure Fee and Student Protection Fund Contribution. (1) The fee for initial licensure as a school residing in and doing business in Kentucky shall be \$500.

(2) The initial contribution to the student protection fund for a school residing in and doing business in Kentucky shall be \$500.

(3) The fee for initial licensure as a school not residing in Kentucky, but doing business in Kentucky, shall be \$1,250.

(4) The initial contribution to the student protection fund for a school not residing in Kentucky, but doing business in Kentucky, shall be \$1,250.

(5) At any time the balance in the student protection fund falls below \$500,000, each licensed school shall make an additional contribution to the fund. The amount of the additional contribution shall be determined by the commission pursuant to KRS 165A.450(2)(a) and (b). The commission shall calculate the amount due per school, pursuant to Section 3(1) and (2) of this administrative regulation, and shall use a percentage appropriate to replenish the fund. The additional contribution shall be paid on a quarterly basis until the fund is replenished.

**(6) For initial and annual renewal license application fees for resident and non-resident commercial driver license training schools refer to 791 KAR 1:050, 791 KAR 1:060, and 791 KAR 1:070.**

Section 3. Annual Renewal License Fee for Schools. (1)(a) Except as provided in paragraph (b) of this subsection, the annual renewal license fee for a school residing in and doing business in Kentucky shall be \$500.

(b) If the school's gross revenue exceeds \$50,000, the annual renewal license fee for a school residing in and doing business in Kentucky shall be \$500 plus twenty-five (25) dollars for each additional \$10,000 of gross revenue in excess of \$50,000, not to exceed \$3,000.

(2)(a) Except as provided in paragraph (b) of this subsection, the annual renewal license fee for a school not residing in Kentucky, but doing business in Kentucky, shall be \$1,250.

(b) If the school's gross revenue exceeds \$50,000, the annual license fee for a school not residing in Kentucky, but doing business in Kentucky, shall be \$1,250 plus twenty-five (25) dollars for each additional \$10,000 of gross revenue for Kentucky residents in excess of \$50,000, not to exceed \$3,000.

(3) Late fees for a resident or nonresident school's annual renewal license shall be:

(a) Ten (10) percent of the total application fee if received after the due date, May 15, up to and including the fifth business day;

(b) Twenty (20) percent of the total application fee if received after the fifth business day, up to and including the tenth business day;

(c) Thirty (30) percent of the total application fee if received after the tenth business day, up to and including the fifteenth business day;

(d) Forty (40) percent of the total application fee if received after the fifteenth business day, up to and including the twentieth business day;

(e) Fifty (50) percent of the total application fee if received after the twentieth business day, up to and including the twenty-fifth business day;

(f) Seventy-five (75) percent of the total application fee if received after the twenty-fifth business day, up to and including the thirtieth business day; and

(g) 100 percent of the total application fee if received after the thirtieth business day.

Section 4. Annual Permit Fees for Agents. The annual permit fee for each agent working for a school licensed by the commission shall be \$175.

Section 5. Transfer of Ownership of a School. The fee for recording a transfer of ownership of a school licensed by the commission shall be \$500.

Section 6. Change of Name of a School. The fee for approval of a change of name of a school shall be \$150.

Section 7. Change of location of a school. The fee for approval of a change of location of a school shall be \$500.

Section 8. Application to Award an Associate Degree. The fee for an application to award an associate degree shall be \$750 per degree.

Section 9. New Program. The fee to apply for a new certificate or diploma program shall be \$200.

Section 10. Program Revisions. ~~[- Certificate, Diploma, and Degree.]~~ (1) The fee to apply for approval to revise twenty-five (25) percent or more of any existing program shall be \$200.

(2) The fee to apply for approval to revise less than twenty-five (25) percent of any program shall be \$100.

Section 11. Transcript Requests from a Closed School. The fee for requesting a transcript from a closed school shall be five (5) dollars.

Section 12. Actual cost of site visits. (1) Actual costs connected with a site visit conducted in accordance with KRS 165A.370~~[(1) and (2)]~~, such as travel, meals, lodging, and consultant honoraria, shall be paid by the school.

(2) The estimated cost of the site visit shall be paid by the school prior to the site visit.

(3) The final settlement regarding actual costs~~[expenses]~~

incurred shall be paid by the school no later than thirty (30) days after receipt of the invoice.

(4) Failure to pay these actual costs shall be grounds for:

(a) Denial of a license; or

(b) Suspension or revocation of an existing license.

(5) This section shall not apply to visits conducted in accordance with KRS 165A.475(3) and (4).

Section 13. Proration or Refund of Fees and Contributions. A fee paid to the commission or contribution to the student protection fund shall not be prorated or refunded.

Section 14. Penalties. A school shall have a license suspended or revoked, be directed to take specific corrective actions, or submit to additional inspections, with and without notice for failure to pay fees or contribute to the student protection fund in accordance with this administrative regulation.

CONTACT PERSON: Misty Edwards, Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-564-4185, email kcpe@ky.gov.

**EDUCATION AND LABOR CABINET**  
**Kentucky Commission on Proprietary Education**  
**(As Amended at ARRS, September 13, 2022)**

**791 KAR 1:027. School record keeping requirements.**

RELATES TO: KRS 165A.370(1)

STATUTORY AUTHORITY: KRS 165A.340~~[(6)]~~~~[(7)]~~, 165A.370(1)(h), (i), 165A.400

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.370(1)(h) and (i) set forth the types of records which shall be maintained by a proprietary school. KRS 165A.340~~[(6)]~~~~[(7)]~~ and 165A.400 authorize the commission to promulgate necessary administrative regulations to promote efficiency of operations relating to proprietary schools. This administrative regulation specifies the manner in which documents shall be maintained and submitted to the commission.

Section 1. Minimum Record Keeping Requirements. Each licensed proprietary school shall maintain a separate file for each student, including, at a minimum:

- (1) Student application for admission;
- (2) Enrollment agreement;
- (3) Transcript or other academic record;
- (4) Student account;
- (5) Placement record; and
- (6) Attendance record.

Section 2. Annual Renewal Record Keeping Requirements. (1)(a) Effective with the 2008 annual license renewal, all proprietary schools shall submit electronic copies of all students' transcripts and student accounts of each student who has attended the school since the end of the immediately preceding renewal period.

(b) The electronic copies shall be identified on the Application for License Renewal Resident School (PE-17) or the Application for License Renewal Nonresident School (PE-18), incorporated in **791 KAR 1:010, Section 12**~~[791 KAR 1:025, Section 3]~~, and shall be submitted in conjunction with the annual renewal application and shall be organized alphabetically according to the students' last names.

(c) Acceptable electronic formats shall be pdf~~[Microsoft Office 97 or later versions, tif, pdf, jpg, jpeg,]~~ or other generally accepted electronic formats.

(2) If there is a change of ownership or a school closure, electronic copies of all students' transcripts and student accounts, in a generally accepted electronic format, shall be submitted to the commission within thirty (30) days of the transfer or closure.

CONTACT PERSON: Misty Edwards, Executive Director,  
Kentucky Commission on Proprietary Education, 500 Mero Street,  
4th Floor, Frankfort, Kentucky 40601-1957, phone 502-564-4185,  
email kcpe@ky.gov.

**EDUCATION AND LABOR CABINET**  
**Kentucky Commission on Proprietary Education**  
**(As Amended at ARRS, September 13, 2022)**

**791 KAR 1:030. Procedures for hearings.**

RELATES TO: KRS Chapter 13B, 165A.350(4)(b),  
165A.360(3)(b), 165A.370(2)-(4), 165A.390, 165A.990

STATUTORY AUTHORITY: KRS 165A.340(6), 165A.400

NECESSITY, FUNCTION, AND CONFORMITY: KRS  
165A.340(6) and 165A.400 authorize the commission to  
promulgate administrative regulations for the administration of KRS  
Chapter 165A. This administrative regulation establishes hearing  
procedures.

Section 1. Definitions. (1) "Charge" means a specific allegation  
contained in a formal pleading, as established in Section 5(3) of  
this administrative regulation, issued by the commission alleging a  
violation of a specified provision of KRS Chapter 165A or the  
requirements established in 791 KAR Chapter 1.

(2) "Complaint" means a written allegation of misconduct by an  
agent or school, or other allegation of a violation of KRS Chapter  
165A, the requirements established in 791 KAR Chapter 1, or  
another state or federal statute or administrative regulation  
applicable to an agent or school.

(3) "Complaint committee" means the committee appointed  
pursuant to KRS 165A.340.

(4) "Formal pleading" means a formal administrative statement  
authorized by the commission which sets forth charges against a  
licensed school or agent and commences a formal disciplinary  
proceeding, pursuant to KRS Chapter 13B, or requests a court to  
take action.

(5) "Informal proceeding" means a proceeding instituted during  
the disciplinary process with the intent of reaching a disposition of  
a matter without further recourse to formal disciplinary procedures  
under KRS Chapter 13B.

(6) "Investigator" means an individual designated by the  
commission to assist the commission in the investigation of a  
complaint or an investigator employed by the Attorney General for  
the commission.

Section 2. Complaint Committee. In accordance with KRS  
165A.340(12), the complaint committee shall:

(1) Be appointed by the chair of the commission to:

(a) Review complaints and investigative reports;

(b) Participate in an informal proceeding to resolve complaints;  
and

(c) Make recommendations for disposition of complaints to the  
full commission including the dismissal of a complaint or the  
issuance of a formal pleading; and

(2) Consist of three (3) persons who may be assisted by the  
commission staff and counsel to the commission.

Section 3. Receipt of Complaints. (1) A complaint may be  
submitted by an individual, organization, or entity.

(2)(a) A complaint shall be in writing and shall be filed on Form  
PE-24, Form to File a Complaint, accompanied, if applicable, by  
Form PE-25, Authorization for Release of Student Records.

(b) The Form PE-24 shall be signed and certified as to its truth  
by the person offering the complaint.

(3)(a) Upon receipt of a complaint, a copy of the complaint  
shall be sent to the agent or school named in the complaint along  
with a request for a written response to the complaint and the time  
and place of the complaint committee hearing, once established.

(b) The agent or school shall file a written response with the  
commission within ten (10) days from the date of receipt.

(4) Upon receipt of the written response of the agent or school

named in the complaint, a copy of the response shall be sent to the  
complainant, along with the time and place of the complaint  
committee hearing, once established.

(5) Upon receipt of the agent or school's response, the  
complaint committee may request an additional response from the  
complainant, agent, or school if additional issues are raised or  
clarification is needed.

Section 4. Initial Review. (1) After the receipt of a complaint or  
the expiration of the period for the response, the complaint  
committee shall consider the complaint, response, and other  
relevant material available.

(2)(a) The complaint committee may take steps to enter into  
informal proceedings with the agent or school which is the subject  
of the complaint for the purpose of resolving the matter.

(b) An agreed order or settlement reached through this process  
shall be approved by the commission.

(c) The complaint committee may employ mediation,  
persuasion, or conciliation, as methods of resolving the matter  
informally.

(3) If the complaint committee determines a complaint warrants  
an investigation against either an agent or school, the complaint  
committee shall authorize an investigator to investigate the matter  
and make a report to the complaint committee at the earliest  
opportunity.

Section 5. Results of Initial Review. (1) After a complete review  
of the complaint, and implementation of any actions available to  
the complaint committee as set forth in Section 4 of this  
administrative regulation, a recommendation shall be made by the  
complaint committee to the commission.

(2) If the commission determines a complaint does not warrant  
further action or the issuance of a formal pleading against an agent  
or school, then the commission shall dismiss the complaint and  
shall notify both the complainant and the agent or school of the  
commission's decision.

(3) If the commission determines a violation of a statute or  
administrative regulation may have occurred or has occurred, then  
the commission shall:

(a) Direct the complaint committee or commission staff to  
undertake further action as established in KRS Chapter 165A or  
Section 4 of this administrative regulation;

(b) Direct the issuance of a formal pleading against either an  
agent or school by commission staff; or

(c) Review the formal pleading and, if approved, it shall be  
signed by the chairman and served upon the agent or school as  
required by KRS 13B.050.

Section 6. Operating without Appropriate License or Agent  
Permit. If the commission receives a complaint that an individual or  
school may be operating without the appropriate agent permit or  
license, the commission shall:

(1) Authorize commission staff to send a letter to the individual  
or school advising of a possible need for a permit or license, and  
enclose the appropriate application package;

(2) Authorize commission staff to issue a letter ordering the  
individual or school to cease and desist from operating the school;

(3) Forward information to the county attorney of the county of  
residence of the individual or school allegedly acting without  
appropriate permit or license, or the county where the alleged  
violation occurred, with a request that appropriate action be taken  
under KRS 165A.990; or

(4) Initiate action in Franklin Circuit Court for injunctive relief.

Section 7. Incorporation by Reference. (1) The following  
material is incorporated by reference:

(a) Form PE-24, "Form to File a Complaint", May 2022[Form  
PE-24, 2017](edition); and

(b) Form PE-25, "Authorization for Release of Student  
Records", May 2022[Form PE-25, 2017](edition).

(2) This material may be inspected, copied, or obtained,  
subject to applicable copyright law, at the Kentucky Commission  
on Proprietary Education, 500 Mero Street, 4th Floor,[3rd Floor,

Capital Plaza Tower,] Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. **This material is also available on the commission's Web site at [www.kcpe.ky.gov](http://www.kcpe.ky.gov).**

CONTACT PERSON: Misty Edwards, Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-564-4185, email [kcpe@ky.gov](mailto:kcpe@ky.gov).

**EDUCATION AND LABOR CABINET  
Kentucky Commission on Proprietary Education  
(As Amended at ARRS, September 13, 2022)**

**791 KAR 1:035. Student protection fund.**

RELATES TO: KRS 165A.450

STATUTORY AUTHORITY: KRS 165A.340(6), 165A.400, 165A.450

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.340(6) and 165A.400 authorize the Kentucky Commission on Proprietary Education to promulgate administrative regulations to administer the provisions of KRS Chapter 165A. KRS 165A.450 requires the commission to promulgate administrative regulations to ensure there is a renewable student protection fund, impose fees when the balance of the fund drops below the minimum, and establish other requirements related to the fund. This administrative regulation establishes standards for distribution of the funds.

Section 1. Definitions. (1) "Commission" means the Kentucky Commission on Proprietary Education.

(2) "Schools" means all schools, resident and nonresident, licensed by the commission.

(3) "Sponsor" means the original source of funds, whether student or entity, used to pay student charges for tuition, books, and fees.

(4) "~~Student~~**[enrolled]**" means a student currently enrolled and attending classes on a regular basis.

Section 2. Student Protection Fund Notice. Schools shall include on the student enrollment agreement, in 14-point type font:

(1) A statement notifying students of the existence of the student protection fund; and

(2) The process for filing a claim against the fund.

Section 3. Standards for Fund Distribution. (1) The commission shall manage the student protection fund ("the fund"). The fund shall be used in accordance with KRS 165A.450.

(2) Each fund distribution for restitution shall be made payable to the appropriate sponsor, as determined by the commission and shall be made upon the presentation of a signed **Form PE-38**, Form for Claims Against the Student Protection Fund~~[, Form PE-38]~~, and supporting documentation, verifying the student's enrollment and regular attendance at the time of the school or program closure. The commission may require supporting documentation, such as canceled checks, loan documents, or other documentation that supports the student's entitlement to restitution.

(3) The amount to be refunded shall equal the actual amount of loans and cash that have been applied to tuition, books, and fees on behalf of the student's attendance at the school. If the claims resulting from a school closing exceed the balance in the fund, the commission shall provide for a pro rata distribution of the fund balance.

(4) If restitution is paid by the fund, the fund shall be subrogated to the amount of the restitution.

(5) In order to be considered, a claim for restitution from the student protection fund shall be made within one (1) year of the date of the school or program closure.

(6) An applicant for payment from the student protection fund who is dissatisfied with the decision of the commission may ask for reconsideration of the commission's determination regarding

eligibility for restitution from the student protection fund.

(7) The request for reconsideration shall be submitted by the applicant to the commission within thirty (30) calendar days of the mailing date of the commission's decision.

(8) The request for reconsideration shall be signed by the student and explain the reasons in support of a different decision.

(9) Within forty-five (45) days of receipt of the request for reconsideration, the commission shall make a final determination and provide notice to the applicant.

(10) **Each student**~~[Students]~~ eligible for reimbursement **shall**~~[will]~~ receive funds from the surety bond or other collateral **before filing a claim against the Student Protection Fund.**

Section 4. Incorporation by Reference. (1) **Form PE-38**, "Form for Claims Against the Student Protection Fund", **May 2022**, **is incorporated by reference**~~[Form PE-38]~~, January 2017, is incorporated by reference].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor~~[300 Sewer Boulevard]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. **This material is also available on the commission's Web site at [www.kcpe.ky.gov](http://www.kcpe.ky.gov).**

CONTACT PERSON: Misty Edwards, Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-564-4185, email [kcpe@ky.gov](mailto:kcpe@ky.gov).

**EDUCATION AND LABOR CABINET  
Kentucky Commission on Proprietary Education  
(As Amended at ARRS, September 13, 2022)**

**791 KAR 1:040. Commercial driver license training school curriculum and refresher course.**

RELATES TO: KRS 165A.330(1), 165A.370, 165A.460(1), **49 C.F.R. 382**

STATUTORY AUTHORITY: KRS 165A.340~~(6)~~~~(3)~~, 332.095(3) NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.460(1) requires that the Kentucky Commission on Proprietary Education establish a curriculum for commercial driver license training schools in consultation with the Kentucky State Police and the Kentucky Community and Technical College System. This administrative regulation establishes the curriculum regarding standards for commercial driver license training schools.

Section 1. A commercial driver license training school shall adhere to the curriculum contained in the General Curriculum Standards for Kentucky Licensed Commercial Driving Schools, **incorporated by reference in 791 KAR 1:070, Section 6.**

Section 2. A commercial driver license training school may offer a refresher course, **pursuant to**~~[per]~~ KRS 332.095~~(3)~~, for persons with a valid Class A commercial driver's license and shall maintain records of all persons taking the refresher course. The commercial driver license training school shall assess the person's qualifications and skill level to determine the appropriate course of study as contained in the General Curriculum Standards for Kentucky Licensed Commercial Driving Schools, **incorporated by reference in 791 KAR 1:070, Section 6.**

Section 3. A commercial driver license training school shall comply with drug testing of students in accordance with the United States Department of Transportation, Federal Motor Carrier Safety Administration Rule 49 C.F.R. 382.

~~[Section 4. Incorporation by Reference. (1) "General Curriculum Standards for Kentucky Licensed Commercial Driving Schools", June 2014, [2010] [edition], is incorporated by reference].~~

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**EDUCATION AND LABOR CABINET**  
**Kentucky Commission on Proprietary Education**  
**(As Amended at ARRS, September 13, 2022)**

**791 KAR 1:050. Application for license for commercial driver license training school.**

RELATES TO: KRS 165A.330(1), 165A.370, 165A.450, 165A.465, 165A.470, 165A.475, 165A.480(1)

STATUTORY AUTHORITY: KRS 165A.340(6), 165A.400, 165A.465(3), 165A.475, 165A.510

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.340(6) and 165A.400 authorize the Kentucky Commission on Proprietary Education to promulgate administrative regulations to administer the provisions of KRS Chapter 165A. KRS 165A.465, 165A.475, and 165A.510 require the commission to promulgate administrative regulations establishing standards and an application procedure for commercial driver license training schools. This administrative regulation establishes the application procedures for commercial driver license training schools.

Section 1. Application for Kentucky Resident Commercial Driver License Training School. (1) Prior to establishment of a commercial driver license training school residing in Kentucky, the school owner shall:

(a) Complete and submit to the commission Form PE 30, Application for Resident Commercial Driver License Training School, with supporting documentation as listed on the form;

(b) Pay the nonrefundable application fee of \$200 established in KRS 165A.475(2);

(c) Pay the nonrefundable license fee for a commercial driver license training school residing in and doing business in Kentucky of \$500;

(d) Pay the nonrefundable contribution to the Student Protection Fund of \$500; and

(e) Meet the requirements of Section 4 of this administrative regulation.

(2) All fees shall be submitted by certified check or money order payable to the "Kentucky State Treasurer".

Section 2. Application for ~~[Non-Kentucky]~~ Non-resident Commercial Driver License Training School. (1) Prior to establishment of a commercial driver license training school not residing in Kentucky but recruiting, advertising, or otherwise doing business in Kentucky, the school's owner shall:

(a) Complete and submit to the commission Form PE 31, Application for Non-Resident Commercial Driver License Training School with supporting documentation as listed on the form;

(b) Pay the nonrefundable application fee of \$200 established in KRS 165A.475(2);

(c) Pay the nonrefundable license fee for a commercial driver license training school not residing in and doing business in Kentucky of \$1,250;

(d) Pay the nonrefundable contribution to the Student Protection Fund of \$1,250; and

(e) Meet the requirements of Section 4 of this administrative regulation.

(2) All fees shall be submitted by certified check or money order payable to the "Kentucky State Treasurer".

Section 3. Annual Renewal License Fee for Commercial Driver License Training Schools. (1)(a) Except as provided in paragraph

(b) of this subsection, the annual renewal license fee for a school residing in and doing business in Kentucky shall be \$500.

(b) If the school's gross revenue exceeds \$50,000, the annual renewal license fee for a commercial driver license training school residing in and doing business in Kentucky shall be \$500 plus twenty-five (25) dollars for each additional \$10,000 of gross revenue in excess of \$50,000, not to exceed \$3,000.

(2)(a) Except as provided in paragraph (b) of this subsection, the annual renewal license fee for a commercial driver license training school not residing in Kentucky, but doing business in Kentucky, shall be \$1,250.

(b) If the school's gross revenue exceeds \$50,000, the annual license fee for a school not residing in Kentucky, but doing business in Kentucky, shall be \$1,250 plus twenty-five (25) dollars for each additional \$10,000 of gross revenue earned from Kentucky resident students in excess of \$50,000, not to exceed \$3,000.

Section 4. (1) Evidence of Liability Insurance Coverage. Each application to operate a commercial driver license training school shall be accompanied by verification of liability insurance coverage for the commercial driver license training school from a Kentucky-licensed insurance carrier, as mandated by KRS 165A.475(1)(d).

(2) Verification of liability insurance coverage from the school's insurance carrier shall include on the policy complete listing of all equipment, serial numbers, vehicle identification numbers covered by the liability insurance with subsequent liability insurance coverage changes filed with the commission in writing within thirty (30) days of the subsequent change.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form PE 30, "Application for Resident Commercial Driver License Training School", as provided in EDvera software version 2.1, edition May 2022[2021][2017-edition]; and

(b) Form PE 31, "Application for Non-Resident Commercial Driver License Training School", as provided in EDvera software version 2.1, edition May 2022[2021][2017-edition].

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**EDUCATION AND LABOR CABINET**  
**Kentucky Commission on Proprietary Education**  
**(As Amended at ARRS, September 13, 2022)**

**791 KAR 1:060. Application for renewal of license for commercial driver license training school.**

RELATES TO: KRS 165A.330(1), 165A.370, 165A.460-165A.515, 49 C.F.R. Part 383[325]

STATUTORY AUTHORITY: KRS 165A.340(6), 165A.400, 165A.485

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.340(6) and 165A.400 authorize the Kentucky Commission on Proprietary Education to promulgate administrative regulations to administer the provisions of KRS Chapter 165A. KRS 165A.485 requires that the Kentucky Commission on Proprietary Education establish application forms for license renewal of commercial driver license training schools. This administrative regulation establishes the renewal procedures for commercial driver license training schools.

Section 1. Renewal Application for Kentucky Commercial

Driver License Training School. (1) On or before forty-five (45) days prior to the expiration date [May 15 of each year], a licensed Kentucky resident commercial driver license training school shall:

(a) Complete and submit to the commission Form PE 32, Renewal Application to Operate a Resident Commercial Driver License Training School, with supporting documentation as listed on the form;

(b) Pay the nonrefundable renewal application fee of \$200 established in KRS 165A.475(2);

(c) Pay the nonrefundable renewal licensure fee required by 791 KAR 1:050, Section 3; and

(d) Meet the requirements of Section 3 of this administrative regulation.

(2) All fees shall be paid by check or money order payable to the Kentucky State Treasurer.

Section 2. Renewal Application for Non-Resident [Non-Kentucky Resident] Commercial Driver License Training School. (1) On or before forty-five (45) days prior to the expiration date [May 15 of each year], a licensed non-resident [non-Kentucky resident] commercial driver license training school not residing in Kentucky, but recruiting, advertising, or otherwise doing business in Kentucky shall:

(a) Complete and submit to the commission Form PE 33, Renewal Application to Operate a Non-Resident Commercial Driver License Training School, with supporting documentation as listed on the form;

(b) Pay the nonrefundable renewal application fee of \$200 established in KRS 165A.475(2);

(c) Pay the nonrefundable renewal licensure fee required by 791 KAR 1:050, Section 3; and

(d) Meet the requirements of Section 3 of this administrative regulation.

(2) All fees shall be paid by check or money order made payable to the Kentucky State Treasurer.

Section 3. Evidence of Liability Insurance Coverage. (1) Each renewal application to operate a commercial driver license training school shall be accompanied by verification of liability insurance coverage for the commercial driver license training school from a Kentucky-Licensed insurance carrier, as mandated by KRS 165A.475(1)(d).

(2) Verification of liability insurance coverage from the school's insurance carrier shall include on the policy a complete listing of all equipment, serial numbers, and vehicle identification numbers covered by the liability insurance with subsequent liability insurance coverage changes filed with the commission in writing within thirty (30) days of the subsequent change.

Section 4. Denial of Renewal Application. (1) The commission shall deny a renewal application to operate a commercial driver license training school for:

(a) Failure to comply with the requirements of KRS 165A.460-165A.515;

(b) Failure to comply with 791 KAR 1:040 to 791 KAR 1:160, governing the application and operation of a commercial driver license training school;

(c) Failure to comply with KRS 165A.475(1)(d) regarding persons connected in any capacity with commercial driver license training schools; or

(d) Failure to maintain all training vehicles in a safe operating condition, pursuant to 49 C.F.R. Part 383[325], as enforced by the Kentucky State Police.

(2) The commission may deny a renewal application to operate a commercial driver license training school for lack of good moral character, as determined by KRS 165A.475(7).

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form PE 32, "Renewal Application to Operate a Resident Commercial Driver License Training School", as provided in EDvera software version 2.1, edition May 2022[2021][2017 edition]; and

(b) Form PE 33, "Renewal Application to Operate a Non-Resident Commercial Driver License Training School", as provided in EDvera software version 2.1, edition May 2022[2021][2017 edition].

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# EDUCATION AND LABOR CABINET Kentucky Commission on Proprietary Education (As Amended at ARRS, September 13, 2022)

**791 KAR 1:070. Commercial driver license training school instructor and agent application and renewal procedures.**

RELATES TO: KRS 165A.310, 165A.330(1), 165A.350, 165A.370, 165A.380, 165A.460, 165A.465, 165A.470, 165A.475, 165A.480, 165A.485, 332.095

STATUTORY AUTHORITY: KRS 165A.340, (6), (10), 165A.400, 165A.465, 165A.510

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.340(6) and (10), 165A.400, 165A.465, and 165A.510 require the Kentucky Commission on Proprietary Education to promulgate administrative regulations for the administration of KRS Chapter 165A and to establish standards for instructors and agents of commercial driver licensing schools, including application and renewal procedures. This administrative regulation establishes the standards for instructors and agents, including application and renewal procedures regarding commercial driver license training schools.

Section 1. Definitions. (1) "Classroom instructor" means a commercial driver license school instructor whom the school owner has qualified to perform classroom instruction only for the classroom sections of the General Curriculum Standards for Kentucky Licensed Commercial Driving Schools.

(2) "Skills Instructor" means a commercial driver's[drivers] license school instructor who instructs the Range and Street sections of the General Curriculum Standards for Kentucky Licensed Commercial Driving Schools and has met the licensing requirements of Section 2 of this administrative regulation.

Section 2. An applicant for a Commercial Driver License Training School Skills Instructor license shall:

(1) Complete and submit Form PE 34, Application for Licensure as a Commercial Driver License Training School Skills Instructor;

(2) Submit two (2) recent passport-size photographs, electronically provided to the commission;

(3) Pay the nonrefundable application fee of twenty (20) dollars established in KRS 165A.475(6);

(4) Pay the nonrefundable initial licensure fee of \$200;

(5) Provide a copy of the applicant's valid Class A CDL license;

(6) Provide proof of at least two (2) years of verifiable commercial over the road driving experience; and

(7) Provide proof of receiving a passing score on the written examination and skills examination administered by the Kentucky State Police as required by 502 KAR 10:030 and 10:035.

Section 3. Application for Renewal of Commercial Driver License Training School Instructor. On or before May 15 of each year, a licensed commercial driver license training school instructor, or a licensed commercial driver license training school on behalf of the skills instructor, shall:

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(1) Complete and submit Form PE 35, Renewal Application for Licensure as a Commercial Driver License Training School Instructor;

(2) Submit two (2) recent passport-size photographs, electronically provided to the commission;

(3) Pay the nonrefundable application fee of twenty (20) dollars established in KRS 165A.475(6); and

(4) Pay the nonrefundable renewal fee of \$200.

Section 4. Classroom Instructors. The CDL school shall submit a Form PE 11, Form for Instructional Staff and Key Administrative Personnel, incorporated by reference in 791 KAR 1:010, to the commission upon qualifying an individual as a classroom instructor.

Section 5. Conditional~~Temporary~~ License for CDL Skills Instructor. (1) The commission shall issue to an applicant who has completed the requirements of Sections 2 and 3 of this administrative regulation a temporary permit, by way of letter, for the performance of skills instructor duties while the license application is being processed.

(2) The commission shall provide the applicant and the licensed school a letter stating the applicant's application is in order and is being processed for applicant licensing.

(a) The commission shall provide this letter within ten (10) business days of receipt of a properly completed application.

(b) This letter shall serve as the applicant's conditional~~temporary~~ license until a regular license is issued.

(c) A copy of the commission's letter shall be maintained by the applicant and be available for review upon request by the commission's inspector or the Kentucky State Police.

(d) If the applicant is denied a license, the commission shall issue a notice to the applicant and the applicant's school rescinding the applicant's conditional~~temporary~~ license for a skills instructor.

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

(a) "General Curriculum Standards for Kentucky Licensed Commercial Driving Schools", June 2014 edition;

(b) Form PE 34, "Application for Licensure as a Commercial Driver License Training School Skills Instructor", as provided in EDvera software version 2.1, edition May 2022~~[2021]~~<sup>[2017]</sup> edition]; and

(c) Form PE 35, "Renewal Application for Licensure as a Commercial Driver License Training School Instructor", as provided in EDvera software version 2.1, edition May 2022~~[2021]~~<sup>[2017]</sup> edition].

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### EDUCATION AND LABOR CABINET Kentucky Commission on Proprietary Education (As Amended at ARRS, September 13, 2022)

**791 KAR 1:080. Maintenance of student records, schedule of fees charged to students, contracts and agreements involving licensed commercial driver training schools, advertising and solicitation of students by commercial driver license training schools.**

RELATES TO: KRS 165A.330(1), 165A.370, 165A.390, 165A.475, 165A.500, 165A.510, 189.125

STATUTORY AUTHORITY: KRS 165A.340~~(6)~~<sup>(3)</sup>, 165A.510  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.500 and 165A.510 require~~authorize~~ the Kentucky Commission on Proprietary Education to establish the standards for maintenance of student records, schedule of fees charged to students and refund policy, contracts and agreements involving licensed commercial driver license training schools, advertising and solicitation of students by commercial driver license training schools. This administrative regulation establishes these standards for commercial driver license training schools.

Section 1. Maintenance of Student Records and Student Roster. (1)(a) Each licensed commercial driver license training school shall maintain a permanent record of instruction given to each student to include the student instructional training progress report cards or sheets, transcripts, student written examination results, and yard and street student skills examination scores for so long as the commercial driver license training school holds a license or conducts business.

(b) If the commercial driver license training school discontinues operation, then the school shall comply with KRS 165A.390(5) and 791 KAR 1:155.

(2) The records to be maintained by the commercial driver license training school shall contain the following:

(a) Name and address of the commercial driver license training school;

(b) Name and address of the student;

(c) A photocopy of, or the number of the student's Kentucky CDL instruction permit license;

(d) A photocopy of, or the number of the student's CDL class A driver's~~drivers~~ license after completion of course requirements and successful completion of license examination requirements administered by the Kentucky State Police;

(e) The type and date of instruction given, whether classroom, yard, street, or behind-the-wheel, including the duration of instruction;

(f) The printed name and signature of the instructor on the student instruction card or progress record sheet or equivalent training record forms;

~~(g) Student's completed enrollment application;~~

~~(g)~~<sup>(h)</sup> Student's completed application, student contract or enrollment agreement, including the student's signature and authorized school official's signature properly dated;

~~(h)~~<sup>(i)</sup> Financial documents signed by the student including the student's completed loan agreement and accurate record of all fees paid to the school and government agencies;

~~(i)~~<sup>(j)</sup> Student's attendance record;

~~(j)~~<sup>(k)</sup> Student's progress report;

~~(k)~~<sup>(l)</sup> Student's transcript including all examination grades and skills proficiency competency scores, or evaluation received during course of instruction;

~~(l)~~<sup>(m)</sup> Written examination and skills examination, including grade; and

~~(m)~~<sup>(n)</sup> Results of medical fitness examination and DOT-required drug test.

(3) The school shall furnish each commercial driver license training student upon the student's request a copy of his or her student instruction record if he or she ceases taking instruction at the school.

(4) All student records, school facilities, and school equipment are subject to inspection by the commission and its representatives upon request and without prior notice to the school.

Section 2. Schedule of Fees Charged to Students and Refund Policy. (1) Each licensed commercial driver license training school shall publish a schedule of fees charged to students for instruction to include as applicable:

(a) Administrative fee;

(b) Registration and ~~/~~ application fee;

(c) Tuition for instruction;

(d) Commercial driver license permit fee;

(e) Off-the-road and on-the-road training fees;

(f) Room and commission costs; and

(g) Department of Transportation drug test and medical fitness examination.

(2) The schedule of fees shall be published:

(a) In the school's catalog, brochure, and Web site;

(b) In the student contract or enrollment agreement; and

(c) Within the school's facility by being conspicuously displayed at the school.

(3) Each licensed commercial driver license training school shall establish and adhere to a refund policy to be published:

(a) In the school's catalog;

(b) In the student contract or enrollment agreement; and

(c) Within the school's facility by being conspicuously displayed at the school.

(4) At least five (5) days before a prospective student signs a contract or enrollment agreement, the commercial driver license school shall provide to the prospective student:

(a) The school catalog;

(b) The student contract or enrollment agreement; and

(c) The student loan agreement, if any.

Section 3. Contracts and Agreements Involving Licensed Commercial Driver License Training Schools. (1) Each licensed commercial driver license training school shall:

(a) File and maintain with the commission an accurate and current list of those persons authorized by the school to execute student enrollment contracts and student tuition loan agreements on behalf of the licensed commercial driver license training school including a sample of each person's signature;

(b) Provide to each student who enters a contract or agreement with a licensed commercial driver training school a copy of the signed contract or enrollment agreement; and

(c) File the original of each student contract or enrollment agreement in the permanent student record maintained by the school.

(2) All contracts or enrollment executed by the licensed commercial driver license training schools and its students shall contain the following information:

(a) The name and address of the school. If the school is conducted under an assumed name or is operated by a corporation, partnership, or association, the contract or enrollment agreement shall contain the name of the individual owners or names of the officers of the corporation, association, or members of the partnership;

(b) A statement containing the following text in at least fourteen (14) point font: "This constitutes the entire agreement between the school and the student. No verbal agreements or promises shall be recognized by either the school or the student.";

(c) The school refund policy;

(d) A signature and date line for the student and an authorized school official;

(e) A complete description of all fees charged as set forth in Section 2 of this administrative regulation; and

(f) A statement containing the following text in at least fourteen (14) point font: "The Kentucky Revised Statutes and Kentucky Administrative Regulations governing licensed commercial driver training schools shall be available at the facility upon request."

Section 4. Advertising and Solicitation of Students by Commercial Driver License Training Schools. (1) A person, school, institution, organization, company, association, or partnership shall not advertise or advertise to recruit students unless licensed by the commission.

(2) A licensed commercial driver license training school shall not use any name other than its licensed name, nor shall it advertise or imply that it is "supervised," "recommended," "accredited," or "endorsed" by the Kentucky Commission on Proprietary Education. A school may state "Licensed by the Kentucky Commission on Proprietary Education" in its advertisements.

(3) A licensed commercial driver training school shall not:

(a) Claim nor imply that it guarantees employment upon successful completion of the program;

(b) Guarantee or imply that it guarantees the student will

receive a commercial driver license training permit or commercial driver license;

(c) Make any false, misleading, or deceptive claims or guarantees of expected annual income or employee benefits;

(d) Hold itself out as being any type of establishment other than an educational or training establishment;

(e) Use a name that is like or deceptively similar to a name used by another commercial driver license training school;

(f) Advertise or imply that instruction may be given to students who fail the program or examinations without charge to the student unless that instruction without examination is contained in the student contract or enrollment agreement; or

(g) Advertise or solicit in the "help wanted" section of any newspaper or periodical.

(4) A licensed commercial driver license training school shall submit a copy of all advertisements and directory listings to the commission at least thirty (30) days prior to the scheduled publishing date.

Section 5. Inspections of Commercial Motor Vehicles Used by Commercial Driver License Training Schools, Including Mandatory Equipment and Out-of-Service Criteria. (1) Annual inspection. The school shall maintain a copy of the results of the Kentucky State Police's annual inspections of the school's vehicle inventory, as listed with the commission.

(2) In order to be approved, the vehicle shall be:

(a) Owned or leased by the licensed school;

(b) In safe operating condition;

(c) Included on the school's liability insurance policy as mandated by KRS 165A.475(1)(d);

(d) Equipped with seat belts for each vehicle occupant as established by KRS 189.125;

(e) Equipped with functioning side-view and rear-view mirrors;

(f) Identified and clearly displayed on the front, sides, and rear of the vehicle, in letters not smaller than six (6) inches in height and in a color vividly contrasting with the color of the vehicle, the following:

1. Name of the commercial driver license training school; and

2. Words "Student Driver."

(3) Expiration of safety inspection and notification of vehicle changes. The commercial driver license training school shall:

(a) Maintain proof that the vehicle is inspected by the Kentucky State Police annually and passes the inspection;

(b) Remove from use any vehicle that has not passed the inspection by the Kentucky State Police; and

(c) File with the commission written notice if a vehicle has been added or deleted from the school's motor vehicle fleet and have submitted to the commission a revised insurance policy as mandated by KRS 165A.475(1)(d) no later than five (5) business days from the date that the vehicle was added or deleted from the school's motor vehicle fleet.

CONTACT PERSON: Misty Edwards, Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-564-4185, email kcpe@ky.gov.

# **EDUCATION AND LABOR CABINET** **Kentucky Commission on Proprietary Education** **(As Amended at ARRS, September 13, 2022)**

## **791 KAR 1:100. Standards for Kentucky resident commercial driver training school facilities.**

RELATES TO: KRS 165A.330(1), 165A.370, 165A.475, 165A.510(1)

STATUTORY AUTHORITY: KRS 165A.340 (6)(3), 165A.510

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.510(1) requires[authorizes] the commission to promulgate administrative regulations to set standards for CDL driver training school facilities. This administrative regulation establishes the commission's policy regarding standards for Kentucky resident



commercial driver training school facilities.

Section 1. The following standards shall apply to Kentucky resident CDL driver training school office facilities:

(1) A Kentucky resident CDL ~~driver~~ training school location shall have and maintain an established place of business in the Commonwealth of Kentucky.

(2) The established place of business of each Kentucky resident CDL ~~driver~~ training school shall:

- (a) Be owned or leased by the driver training school;
- (b) Regularly occupied; and
- (c) Solely used by that driver training school for the business of:

- 1. CDL ~~driver~~ training instructions for hire;
- 2. Preparing members of the public for examination for a commercial motor vehicle operator's license; and
- 3. Instruction of knowledge and skills for entry level tractor and trailer drivers or commercial motor vehicle operators.

(3) The established place of business of each Kentucky resident CDL driver training school shall be located in a district zoned for business or commercial purposes. The Kentucky resident CDL driver training school office shall have a permanent sign displaying the licensed school name. If the classroom or training yard is at a different address, it shall also have a permanent sign meeting the same criteria.

(4) The established place of business or advertised address of any Kentucky resident CDL driver training school shall not consist of or include a house trailer, residence, tent, temporary address, office space only, a room or rooms in a hotel, rooming house or apartment house, or premises occupied by a single or multiple unit dwelling house. Furthermore, a modular building or structure for use as a classroom or office shall be permanently affixed to the property and meet all applicable building codes.

(5) The Kentucky resident CDL ~~driver~~ training school, office, and classes shall be operated by responsible personnel during stated office hours and shall be open to inspection of the premises, facilities, records and vehicles by any authorized representative of the commission during this time.

(6) The Kentucky resident CDL ~~driver~~ training school shall have a business telephone used exclusively for the operation of the driving school and operational during the stated office hours.

(7) A Kentucky resident CDL driver training school shall not transfer its license without filing the Application to Transfer Ownership of a ~~Proprietary~~ School, Form PE-21, incorporated by reference in 791 KAR 1:010, Section 12, for prior approval of the commission. There will be a \$500 fee for a transfer of ownership.

(8) ~~If [Should]~~ a Kentucky resident CDL driver training school ~~discontinues~~ operations, the license and applicable student records shall be surrendered to the commission, at the expense of the licensee, in accordance with 791 KAR 1:155.

(9) A branch or satellite Kentucky resident CDL driver training school shall be licensed as an independent Kentucky resident CDL driver training school and meet all of the requirements of the commission as provided for in KRS Chapter 165A and 791 KAR 1:040 to 791 KAR 1:100~~791 KAR 1:090~~.

Section 2. The following standards shall apply to Kentucky resident CDL driver training school classroom facilities:

(1) The classroom facility of each Kentucky resident CDL driver training school shall be reasonably near its office facility and within thirty (30) minutes normal driving time of that facility.

(2) The classroom shall contain sufficient space, equipment, and seating to carry on the business of classroom instruction for students enrolled in the Kentucky resident CDL ~~driver~~ training school, and preparation of students for examination for a commercial motor vehicle operator's license.

(3) The classroom facility shall have adequate lighting, heating, ventilation, sanitation facilities, and shall comply with all state and local laws relating to public health, safety and sanitation.

(4) The classroom facility shall contain the following equipment and supplies:

- (a) Individual desks or tables with writing surfaces that, if

required, ~~may~~could accommodate up to thirty (30) classroom students, or the school's maximum, number, if less than thirty (30) classroom students, based on available space and occupancy limits established by applicable fire code;

(b) Adequate blackboards or whiteboards which are visible from student seating areas;

(c) Adequate visual aids, charts, and diagrams or pictures relating to the operation of commercial motor vehicles and traffic laws;

(d) Other devices that may aid in acquainting students with state and federal traffic laws and prepare them to safely operate commercial motor vehicles; and

~~(e) One (1) of the following:~~

1. Overhead projector or multimedia projector; or

2. A thirty-five (35) millimeter slide projector and slides; or

3. A video/audio display screen of not less than nineteen (19) inches diagonal measure, capable of operation in conjunction with electronic media for providing driver training instruction; and

~~(e) [(f)]~~ All Kentucky Revised Statutes and administrative regulations governing CDL ~~driver~~ training schools, commercial motor vehicle operator license requirements and federal motor carrier rules and regulations, shall be prominently displayed so as to be accessible to applicants for enrollment and all students.

(5) In addition to the equipment and supplies in subsection (4) of this section~~foregoing~~, the following are suggested teaching aids:

(a) A reaction time testing device;

(b) Peripheral vision testing device; and

(c) Magnetic traffic boards; and

~~(d) Other devices that may aid in acquainting students with state and federal traffic laws and prepare them to safely operate commercial motor vehicles.~~

Section 3. Location~~Relocation~~ Change of a Licensed ~~[Kentucky Resident]CDL driver~~ Training School. Prior to relocating any ~~[Kentucky resident]CDL driver~~ training school office, classroom facility, behind-the-wheel training facility or location, or equipment thereof, the ~~[Kentucky resident]CDL driver~~ training school shall:

(1) Submit a completed Application to Change the Location of a ~~Proprietary~~ School, Form PE-23, incorporated by reference in 791 KAR 1:010, Section 12;

(2) Submit documentation indicating the new location is in compliance with all fire and safety codes;

(3) Submit the required change of school location application fee of \$500 by certified check or money order made payable to the Kentucky State Treasurer; and

(4) Complete a successful inspection by the Kentucky State Police pursuant to the procedures outlined by KRS 165A.475(4).

~~[Section 4.] [Incorporation by Reference. (1) "Application to Change the Location of a Proprietary School", 2017 edition, is incorporated by reference.~~

~~(2) [This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Commission on Proprietary Education, 500 Mero Street] 300 Sewer Boulevard], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

CONTACT PERSON: Misty Edwards, Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-564-4185, email kcpe@ky.gov.

**EDUCATION AND LABOR CABINET**  
**Kentucky Commission on Proprietary Education**  
**(As Amended at ARRS, September 13, 2022)**

**791 KAR 1:150. Bond requirements for agents and schools.**

RELATES TO: KRS 165A.350(3)-(7), (10), 165A.360(2)-(5), (10)

STATUTORY AUTHORITY: KRS 165A.340~~(6) [(3)]~~, 165A.350(3), 165A.360(2), 165A.400

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.340~~(6) [(3)]~~ and 165A.400 authorize the commission to promulgate administrative regulations to administer the provisions of KRS 165A.310-165A.390, including establishment of fees and other charges. KRS 165A.350 requires all proprietary schools to maintain a surety bond for the agents and the schools. KRS 165A.360(2) sets forth the range of bonding requirements for agents and schools and requires the commission to establish the bond amounts. This administrative regulation sets the surety bond requirements to be maintained on agents and schools.

Section 1. Surety Bond. (1) A school shall:

(a) Complete a School Surety Bond, Form PE-26; and

(b) Maintain a school surety bond in the amount of at least \$20,000.

(2) In lieu of the school surety bond, the commission shall accept an irrevocable letter of credit made in favor of the Kentucky Commission on Proprietary Education from a verifiable licensed financial institution in the amount of at least \$20,000, or other types of collateral as approved by the commission that meet this minimum amount of \$20,000 as established in KRS 165A.350(3).

Section 2. Agent Surety Bond. (1) A school shall:

(a) In accordance with KRS 165A.350(3) maintain an agent surety bond, or in the case of multiple agents, maintain a blanket agent surety bond, in the amount of at least \$5,000 for each agent employed by the school; and

(b) Complete a~~[Form PE-27,]~~ Blanket Agent Surety Bond, Form PE-27.

(2) In lieu of the agent surety bond, the commission shall accept an irrevocable letter of credit made in favor of the Kentucky Commission on Proprietary Education from a licensed financial institution equal to the amount specified in subsection (1) of this section~~[above]~~, ~~[made in favor of the Kentucky Commission on Proprietary Education]~~ or other types of collateral as approved by the commission that meet the minimum amount established in subsection (1) of this section as established in KRS 165A.350(3).

Section 3. Multiple School Campuses. (1) Each school campus for any school residing in and doing business in Kentucky for licensing and bonding purposes shall be considered a separate school and shall be required to provide a separate school surety bond and an agent surety bond.

(2) Each nonresidential school doing business in Kentucky shall be required to provide a school surety bond and an agent surety bond.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form PE-26, "School Surety Bond", [Form PE-26, 2017 Jedition May 2022; and

(b) Form PE-27, "Blanket Agent Surety Bond", [Form PE-27, 2017 Jedition May 2022.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor~~300 Sewer Boulevard~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the commission's Web site at www.kcpe.ky.gov.

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**EDUCATION AND LABOR CABINET**  
**Kentucky Commission on Proprietary Education**  
**(As Amended at ARRS, September 13, 2022)**

**791 KAR 1:155. School closing process.**

RELATES TO: KRS 61.870-61.884, 61.878(1)-(5), 165A.340~~(11) [(8)]~~, 165A.370, 165A.390(5)

STATUTORY AUTHORITY: KRS 165A.390(5), 165A.400

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.400 authorizes the commission ~~[board]~~ to promulgate administrative regulations to administer the provisions of KRS 165A.310 to 165A.390. Pursuant to KRS 165A.390(5), prior to discontinuance of operations, a school shall convey student records to the commission. The commission ~~[board]~~ shall set forth which records are to be conveyed, the manner they are to be conveyed, where they shall be stored, and the length of time for storage. This administrative regulation sets forth the specific responsibilities of a licensed school if it discontinues operations in accordance with KRS 165A.390(5).

Section 1. Definitions. (1) "Academic records" means records pertaining to academic matters, including enrollment agreements, contracts, transcripts, syllabi, catalogs, course listings, and attendance records~~[whether maintained in paper or electronic form]~~.

(2) "Discontinuance of operation" means ceasing to operate as a school in the ordinary course of business, or in accordance with the minimum standards and requirements set forth in KRS 165A.370, or in a manner that prevents a student from completing the course or program~~[courses]~~ as scheduled.

(3) "Financial aid records" means records pertaining to financial aid matters including applications for financial aid, award notices, disbursement amounts, refunds, student accounts, and loan promissory notes.

(4) "Financial records" means records pertaining to financial matters including ledger cards to include charges, credits, disbursements, refunds, and financial information.

Section 2. Procedures for Discontinuance of Operations and Conveyance of Student Records. (1) A school shall notify the commission in writing of its intent to discontinue operations at least ten (10) business days prior to discontinuation of operations.

(2) A school shall simultaneously submit to the commission and the surety or financial institution notification of cancellation of school surety bonds, agent surety bonds, or letters of credit.

(3) If a school closes, the school shall make arrangements with the commission to forward all student transcripts, financial aid records, and financial records to the offices of the commission.

(4) If a school closes, the school shall arrange with another school or schools to provide teach-out options for students who may need that service.

Section 3. Immediate or Precipitous School Closure. In the absence of a notification of the intent to close, if the commission determines that a school has discontinued operations, a school shall submit the following records:

(1) Academic records of current and former students who attended the school within the last two (2) years prior to closure;

(2) Transcripts of former students who attended the school more than two (2) years prior to closure;

(3) Financial aid records of current and former students; and

(4) Financial records of current and former students; and

(5) Documents subpoenaed by the commission or the commission's designee in accordance with KRS 165A.340~~(11) [(8)]~~.

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Section 4. Retention of Records by the Commission. (1) The commission shall retain the original documents, or true and accurate copies, of transcripts and all other documentation received pursuant to Section 2 of this administrative regulation, in accordance with the Kentucky Commission on Proprietary Education Records Retention Schedule Recommendation developed with the Kentucky Department of Libraries and Archives.

(2) Documents obtained by the commission pursuant to Section 2 of this administrative regulation shall be state records under KRS 61.870 to 61.884 and subject to KRS 61.878(1)-(5).

Section 5. Incorporation by Reference. (1) "Kentucky Commission on Proprietary Education Records Retention Schedule Recommendation", June 14, 2012, is incorporated by reference [October 18, 2007, is incorporated by reference].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor [300-Sewer Boulevard], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the commission's Web site at [www.kcpe.ky.gov](http://www.kcpe.ky.gov).

CONTACT PERSON: Misty Edwards, Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-564-4185, email [kcpe@ky.gov](mailto:kcpe@ky.gov).

### EDUCATION AND LABOR CABINET Kentucky Commission on Proprietary Education (As Amended at ARRS, September 13, 2022)

**791 KAR 1:160. Transfer of ownership, change of location, change of name, revision to existing programs.**

RELATES TO: KRS 165A.360(2), (7), (9), 165A.370(1), (2)

STATUTORY AUTHORITY: KRS 165A.340 ~~(6)~~ (7), 165A.360(2), (9), 165A.370(1)(b), (j), 165A.400

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.400 authorizes the commission to promulgate administrative regulations to administer the provisions of KRS 165A.310 to 165A.390. Pursuant to KRS 165A.360(9), licenses ~~certificates of approval~~ issued by the commission are transferable. KRS 165A.370(1)(b) and (j) provide the commission with the authority to ensure that schools have all the necessary equipment to operate. This administrative regulation governs the procedures that a school shall follow to transfer ownership, change the location, change the name of the school, or revise an existing program for twenty-five (25) percent or more, as established in 791 KAR 1:010, Section 10 [201 KAR 40:020, Section 5(2)].

Section 1. Transfer of Ownership. A school which transfers ownership shall: (1) File a completed, signed and dated Application to Transfer Ownership of a School, (Form PE-21), incorporated by reference in 791 KAR 1:010, Section 12 ~~referenced by 791 KAR 1:025~~, for commission approval within ten (10) days following the effective date of transfer.

(2) Pay by check or money order a transfer fee as set forth in 791 KAR 1:025, Section 5; and

(3) Submit a copy of legal evidence showing the transfer of ownership agreement and evidence of purchase.

Section 2. Change of Location. (1) A school that changes location shall at least thirty (30) days prior to the change of location:

(a) File a completed, signed, and dated, Application to Change the Location of a School, (Form PE-23), incorporated by reference in 791 KAR 1:010, Section 12 ~~referenced by 791 KAR 1:025~~, for commission approval; and

(b) Pay by check or money order an application fee for the change of location set forth in 791 KAR 1:025, Section 7.

(2)(a) An inspection shall be conducted by a member of the

commission or its designee and submitted to the commission for approval.

(b) Schools that fail to meet minimum statutory and regulatory standards shall be provided a list of corrective measures to be completed prior to operation of the school.

Section 3. Change of Name of a School. A school which changes its name shall at least (30) days prior to the change of name:

(1) File a completed, signed, and dated, Application to Change the Name of a School, (Form PE-22), incorporated by reference in 791 KAR 1:010, Section 12 ~~referenced by 791 KAR 1:025~~, for commission approval; and

(2) Pay by check or money order an application fee for a change of name as set forth in 791 KAR 1:025, Section 6.

Section 4. Revise An Existing Program. (1) A school which revises an existing program for twenty-five (25) percent or more, as established in 791 KAR 1:010, Section 10 ~~791 KAR 1:020, Section 5(2)~~ shall at least thirty (30) days prior to the next commission meeting:

(a) File a completed, signed, and dated, Application to Revise an Existing Program for 25% or More, (Form PE-13), incorporated by reference in 791 KAR 1:010, Section 12 ~~referenced by 791 KAR 1:020~~, for commission approval; and

(b) Pay by check or money order the fee as set forth in 791 KAR 1:025, Section 10.

(2) A school which revises an existing program for less than twenty-five (25) percent shall file a completed, signed, and dated, Notification to Revise an Existing Program For Less Than 25%, (Form PE-12), incorporated by reference in 791 KAR 1:010, Section 12 ~~referenced by 791 KAR 1:020~~, prior to the effective date of change.

Section 5. Expansion of School Facilities. (1) If a school expands the space of an approved location, the school shall notify the commission in writing at least ten (10) days prior to occupancy.

(2) If a school utilizes a space, other than an approved location, on an on-going basis, which is already approved for public use, the school shall notify the commission in writing.

Section 6. Conditional Approval. The executive director may provide conditional approval of applications until submitted to the commission for final approval.

CONTACT PERSON: Misty Edwards, Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-564-4185, email [kcpe@ky.gov](mailto:kcpe@ky.gov).

### LABOR CABINET Department of Workers' Claims (As Amended at ARRS, September 13, 2022)

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

RELATES TO: KRS Chapter 342

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 requires ~~provides that~~ the Commissioner of the Department of Workers' Claims to ~~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) requires ~~provides~~ the Commissioner of the Department of Workers' Claims to ~~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 established to ensure[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 establish[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 establishes provisions to ensure[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 that[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 that[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 parts/part, or types/type of injury and performed by a physician with the same or similar qualifications.

~~(14)~~~~(13)~~ "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)~~~~(14)~~ "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)~~~~(15)~~ "Vendor" means a person or entity that[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 has the education, training, and experience, necessary to evaluate clinical issues and services for medical necessity and appropriateness~~[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 has the education, training, or experience, necessary to evaluate medical bills and statements~~[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 if the 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 or its utilization review vendor~~[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, peer-to-peer conferences requested, peer-to-peer conferences that resulted in approval of the requested treatment, and peer-to-peer conferences that resulted in denial of the requested treatment.

(a) The medical payment obligor or its utilization review vendor shall email the summaries in the Microsoft Excel spreadsheet with rows labeled for each summary category to LaborEDI@ky.gov.

(b) The summaries shall only include data gathered from the medical payment obligor's most recent complete fiscal year that ended on or before March 31 of the year in which the summaries are due. The summaries~~[- The annual report the approved vendor]~~ shall be filed with the commissioner no later than September 1 each year~~[August 1 for the preceding year, including any fiscal year ending on or before June 30].~~

(c) If a utilization review vendor provides utilization review services for more than one (1) medical payment obligor, the utilization review vendor shall submit a separate spreadsheet for each medical payment obligor.

(d) If a utilization review or a peer-to-peer conference results in a portion of the treatment being approved and a portion of the treatment being denied, the result shall be reported as both an approval and a denial for reporting purposes.

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 the commissioner's[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 **once[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;**and[.]**
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;**and[.]**
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, **[.]including a medical doctor, surgeon, psychologist, optometrist, dentist, podiatrist, and osteopathic practitioner, acting within the scope of the license or licenses required by the jurisdiction in which they are employed.**

**(2) Utilization review personnel shall hold the license required by the United States' jurisdiction in which they are employed.**

**(3) A physician shall supervise utilization review personnel.**

**(4) A physician shall authorize and ratify any utilization review denial.**

**(5)[(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.

**(6)[(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 **of a request for preauthorization**, 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)(a)1.~~ 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.

2. 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.

(b) The rescheduled peer-to-peer conference shall be held no later than two (2) business days following the original conference date.

(c) 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 established~~[set out]~~ in 803 KAR 25:010, Section 22.

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.

**PUBLIC PROTECTION CABINET**  
**Department of Insurance**  
**Licensing Division**  
**(As Amended at ARRS, September 13, 2022)**

**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, 304.9-170, 304.9-230, 304.9-260, 304.9-270, 304.9-280, 304.9-295, 304.9-320, 304.9-430, 304.14-642, Pub. L. 108-264, Sect. 207

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 the Department of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code, KRS Chapter 304. KRS 304.9-080 requires the commissioner to prescribe and furnish all forms required for licenses and appointments under Subtitle 9 of the Kentucky Insurance Code. KRS 304.9-105 requires the commissioner to promulgate administrative regulations establish requirements for[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 establish requirements for[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 304.9-230 and 304.9-295 require[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 variable life and variable annuity products line of authority or 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) Except as otherwise provided in this chapter, 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) If the applicant is designating Kentucky as his or her home state, a completed background check through the Kentucky Administrative Office of the Courts; and

(d) Except as provided in KRS 12.357, 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, ~~an[no]~~ examination shall not be[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 fee[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) If the applicant is designating Kentucky as his or her home state, a completed background check through the Kentucky Administrative Office of the Courts; and

(c) Except as provided in KRS 12.357, the applicable fees[fee] established in 806 KAR 4:010.

(2) The documents and fees required under subsection (1) of this section shall be submitted prior to scheduling an examination.

**(3)** 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.

**(4)(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.

**(5)(4)** To retake an examination, an applicant shall submit to the department:

(a) Form 8304, Examination Retake Form; and

(b) The applicable examination fee[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. **If the applicant is designating Kentucky as his or her home state,** a completed background check through the Kentucky Administrative Office of the Courts; and

3. **Except as provided in KRS 12.357,** 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 fee[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. **Once the total credit hours are determined,** 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 an exemption from continuing education requirements under KRS 304.9-295(3)(d) 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) Except as otherwise provided in this chapter, 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. ~~Incorporation~~~~[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)~~~~[(9/2024)]~~;
  - (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>.

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](mailto:abigail.gall@ky.gov).

**PUBLIC PROTECTION CABINET**  
**Department of Insurance**  
**(As Amended at ARRS, September 13, 2022)**

**806 KAR 17:585. Annual report mental health parity nonquantitative treatment limitation compliance.**

RELATES TO: KRS 304.1-050(1), 304.17A-660, 304.17A-669, 45 C.F.R. 146.136, 45 C.F.R. 147.160, 42 U.S.C. 300gg-26

STATUTORY AUTHORITY: KRS 304.2-110, 304.17A-661

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.17A-661 requires an insurer that issues or renews a health benefit plan to annually report to the commissioner the self-compliance with the federal Mental Health Parity and Addiction Equity Act, 42 U.S.C. 300gg-26, related to nonquantitative treatment limitations between medical and surgical benefits and mental health substance use disorder benefits, to demonstrate that these[such] treatment limitations are applied comparably and requires the commissioner to establish a form for this purpose. This administrative regulation establishes~~sets~~

~~forth~~] the format and submission time frame for the data reporting requirements in KRS 304.17A-661.

Section 1. Definitions.

- (1) "Commissioner" is defined by KRS 304.1-050(1).
- (2) "Insurer" is defined by KRS 304.17A-005(29).
- (3) "Nonquantitative treatment limitations" as defined by KRS 304.17A-660(3).

Section 2. Data Reporting Requirements.

- (1) An insurer that issues or renews a health benefit plan and is authorized to write health insurance in this state shall submit an annual report containing the information described in KRS 304.17A-661 on the Nonquantitative Treatment Limitation (NQTL) Reporting Submission Form to the commissioner by April 1<sup>st</sup> of each year for the previous plan year.
- (2) The report shall be submitted electronically through:
  - (a) Email; or
  - (b) A portal designated for this purpose in an electronic format prescribed by the Commissioner.

Section 3. Material Incorporated by Reference.

- (1) "Nonquantitative Treatment Limitation (NQTL) Reporting Submission Form", 5/2022 is incorporated by reference.
- (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>.

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](mailto:abigail.gall@ky.gov).

**PUBLIC PROTECTION CABINET**  
**Department of Housing, Buildings and Construction**  
**Division of Heating, Ventilation, and Air Conditioning**  
**(As Amended at ARRS, September 13, 2022)**

**815 KAR 8:010. Licensing requirements for master HVAC contractors and journeyman HVAC mechanics.**

RELATES TO: KRS 198B.650, 198B.654, 198B.656, 198B.658, 198B.659, 198B.660, 198B.664, 198B.668, 198B.672, 198B.676

STATUTORY AUTHORITY: KRS 198B.654(1), 198B.658, ~~[198B.660(1), (2), 198B.664[(1), (3)], 198B.676(1)]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654(1) requires the department to promulgate administrative regulations in accordance with KRS Chapter 13A to administer, coordinate, and~~[necessary to]~~ enforce the provisions of KRS 198B.650 through 198B.689 and to conduct HVAC examinations. KRS 198B.658 requires the department to establish ~~fees~~~~[qualifications]~~ for HVAC licensure and certification. ~~[KRS 198B.660(1) and (2) require the department to establish examination requirements.]~~ KRS 198B.664 requires the department to establish requirements, including fees, for license renewal and inactive licenses. KRS 198B.676(1) requires the department to establish fees by administrative regulation. This administrative regulation establishes the licensure requirements for master HVAC contractors and journeyman HVAC mechanics.

Section 1. General Requirements. (1) Master HVAC Contractor.

- (a) Supervision. The master HVAC contractor shall supervise and be primarily responsible for all HVAC work performed by the employees and subcontractors of the licensee or the company that the licensee represents, whichever is applicable.
- (b) Company license. If a licensee, who is an employee of a company and whose license represents the company, if the licensee ceases to represent the company or if the name of the

company changes, the licensee shall:

1. Notify the department in writing; and
2. Request a change of information.

(c) Death of a master HVAC contractor.

1. If the master HVAC contractor representing a company dies, the company shall notify the department within ten (10) days of the master HVAC contractor's death.

2. The 180 day interim period described in KRS 198B.667 shall begin on the date the master HVAC contractor dies.

3. The company shall not be required to renew the deceased's master HVAC contractor license, if the license renewal date falls within the 180 [day]-interim period.

4. The company shall not use the deceased master HVAC contractor license after the expiration date of the interim period.

5. The company shall notify the department when the company has a replacement master HVAC contractor to represent the company on or before the expiration date of the interim period.

(2) Journeyman HVAC mechanic Supervision. The journeyman shall:

- (a) Be physically on site;
- (b) Personally observe and be responsible for each apprentice assigned to the journeyman in carrying out the installation, alteration, and repair of HVAC systems; and
- (c) Otherwise operate under the general direction and supervision of the master HVAC contractor.

## Section 2. Initial Application Requirements.

(1) Filing the application.

(a) Master HVAC contractor application. An applicant seeking a master HVAC contractor license shall submit to the department:

1. A completed Master HVAC Contractor License Application on Form HVAC 1;

2. An initial license application fee of \$250 for a twelve (12) month license;

3. Proof of the applicant's experience as required by KRS 198B.658(1)(c) and this administrative regulation; and

4. Proof of insurance as required by KRS 198B.668.

(b) If the master HVAC contractor applicant is an employee representing a company, the applicant shall state the company name on the application form. The company may provide the insurance certificates and shall be subject to this administrative regulation.

(c) Journeyman HVAC mechanic application. An applicant seeking a journeyman HVAC mechanic license shall submit to the department:

1. A completed Journeyman HVAC Mechanic License Application on Form HVAC 2;

2. An initial license application fee of fifty (50) dollars for a twelve (12) month license; and

3. Proof of the applicant's experience as established by KRS 198B.658(2)(c).

(d) Initial license fees may be prorated for not less than seven (7) months or more than eighteen (18) months and shall expire on the final day of the applicant's birth month.

(e) Master HVAC contractor applicants and journeyman HVAC mechanic applicants shall provide to the department proof of satisfactory completion of the respective examination required by Section 4 of this administrative regulation.

(f) Master HVAC contractor applicants and journeyman HVAC mechanic applicants shall provide to the department a passport-sized, color photograph of the applicant taken within the past six (6) months.

(2) Termination of application.

(a) The initial application shall remain pending until all requirements are met, up to a period of one (1) year after the date the application is submitted to the department.

(b) At the end of one (1) year, the application shall be voided[void].

## Section 3. An applicant for reciprocity shall:

(1) Comply with the requirements established in the reciprocity agreement between Kentucky and the state in which the applicant is licensed;

(2)

(a) For a Master HVAC Contractor license, [an applicant shall] comply with Section 2(1)(a) and (b) of this administrative regulation;;

(b) For a Journeyman HVAC mechanic license, [an applicant shall] comply with Section 2(1)(c) of this administrative regulation;; and;

(c) If applying for both licenses, submit the application fee[an application fee shall be submitted] for each license with each application form.

## Section 4. Examinations.

(1) The HVAC examinations shall be developed, administered, and scored by the department or its designee.

(2) Master HVAC Contractor examination requirements. The examination shall test the applicant's knowledge of:

(a) Codes, standards, and current technological and industry recommended practices with respect to the proper installation, maintenance, repair, remodeling, or alteration of all types of HVAC systems; and

(b) Law and regulation relating to HVAC business.

(3) Journeyman HVAC mechanic examination requirements.

(a) The examination shall test the applicant's knowledge of codes, standards, and current technological and industry recommended practices with respect to the proper installation, maintenance, and repair, remodeling, or alteration of all types of HVAC systems.

(b) A journeyman HVAC mechanic applicant may apply the passage of a master HVAC contractor's examination for the journeyman HVAC mechanic's examination requirement. The applicant may use the same master HVAC contractor's examination score to satisfy the master HVAC contractor's examination requirement if the examination score is valid pursuant to subsection (7) of this section.

(4) Except as provided in subsection (8) of this section, an applicant shall pass with a score of at least seventy (70) percent on the examination.

(5) Examination requests.

(a) Examination applicants who wish to take any HVAC examination provided by the department shall submit to the department:

1. A completed HVAC Examination Registration Form, Form HVAC-4;

2. The appropriate, non-refundable examination fee:

a. For a master HVAC contractor, \$150; or

b. For a journeyman HVAC mechanic, fifty (50) dollars; and

3. A passport-sized color photograph of the applicant taken within the past six (6) months.

(b) Notice of the time and place of examinations shall be given by the department at least one (1) week prior to the date of the examination to each person who has a registration form on file.

(c) If an applicant fails to complete the department-provided examination within one (1) year from the date of the first notice of examination, the application shall be void.

(d) An applicant who fails an examination may request to retake the examination. Except for the examination fee, an applicant shall not resubmit the requirements in paragraph (a) of this subsection.

(e)[(a)] A request to sit for [the]an examination provided by any facility other than the department shall be made directly to a[the] testing facility[facilities] approved by the department.

(f)[(b)] A list of facilities and contact information shall be provided by the department to applicants upon request.

(6) The examination shall be provided as set forth in KRS 198B.660.

(7) A passing score on the examination shall be valid for a period of three (3) years.

(8) Upon application by a testing agency, a national code group, or by an applicant for licensure, the department shall recognize another examination as equivalent to the examinations administered by the department if the person or group submitting the examination demonstrates that the examination covers the

same material and requires the same level of knowledge as the department's examination.

(9) Reasonable accommodations shall be made if necessary to provide accessibility to disabled applicants, upon request.

Section 5. Experience Requirements.

(1) Records of experience. An applicant's experience shall be listed on the application form.

(a) Proof of ~~listed~~ experience shall be provided by:

1. A W-2 form;

2. An affidavit by a master HVAC contractor who directed and supervised the applicant;

3. A copy of a current master HVAC contractor license, journeyman HVAC mechanic license, or equivalent, held by the applicant in a state other than Kentucky, if the state requires licensure or ~~the~~ equivalent;

4. Verifiable documentation demonstrating the nature and extent of HVAC contracting work performed in a state other than Kentucky, if the state does not require licensure or the equivalent; or

5. Department of Defense form DD 214.

(b) Additional proof of experience shall be requested by the department, prior to or after licensing, if the department has reason to believe that the experience shown is insufficient or nonexistent; ~~and~~

(2) One (1) year of HVAC experience shall consist minimally of 1,500 hours of HVAC work in a continuous~~contiguous~~ twelve (12) month period.

Section 6. Inactive License Status.

(1) A licensee may request that his or her~~a~~ license be placed in inactive status.

(2) A master HVAC contractor licensee in inactive status shall not be required to maintain insurance as required by KRS 198B.668.

(3) A license that is in inactive status shall be exempt from annual renewal.

(4) A certified HVAC inspector may be licensed as a master HVAC contractor or licensed as a journeyman HVAC mechanic, but shall place the license in inactive status while having an active HVAC inspector certification.

(5) Performing HVAC work while holding an inactive license shall be grounds for revocation or suspension of all HVAC licenses and certifications held by the licensee.

Section 7. Renewal, Restoration, Reinstatement, and Reactivation Requirements and Procedures.

(1) Filing for renewal. A master HVAC contractor and a journeyman HVAC mechanic shall submit to the department:

(a) A completed renewal application notice;

(b)

1. A renewal fee of \$250 made payable to the Kentucky State Treasurer for a master HVAC contractor; or

2. A renewal fee of fifty (50) dollars made payable to the Kentucky State Treasurer for a journeyman HVAC mechanic; ~~and~~

(c) Proof of annual continuing education attendance in accordance with 815 KAR 2:010; and

(d) Proof of insurance as required by KRS 198B.668 for a master HVAC contractor.

(2)

(a) Except for a license placed in inactive status, application for license renewal shall be filed no later than the last day of the licensee's birth month.

(b) A license shall be renewed each year.

(c) A license that is not timely renewed shall immediately expire.

(3)

(a) The renewal fee shall be paid prior to renewal.

(b) The department shall send a renewal application notice to each licensee each year to be returned with the required fee.

(4) A renewal application notice filed late, but ~~not~~~~no~~ more than sixty (60) days after the expiration of the license, shall be accepted, but a restoration fee, as established in Section 8(1) of

this administrative regulation, shall be added to the renewal fee.

(5)

(a) A former licensee whose license has terminated as established in KRS 198B.664(3) may have his or her license reinstated if the licensee satisfies the application requirements for renewal as established in subsection 1 of this section and submits a reinstatement fee as established in Section 8(4) of this administrative regulation no later than three (3) years from the date the former license was terminated.

(b) A former licensee seeking licensure under this administrative regulation, but whose terminated license was not timely reinstated as established in paragraph (a) of this subsection, shall be required to satisfy all requirements applicable to new applicants for initial licensure as established in this administrative regulation.

(6) An inactive license shall be reactivated upon payment of the annual renewal fee, the reactivation fee, and upon compliance with the continuing education requirements established in 815 KAR 2:010.

(7) If an initial license is for a period of less than twelve (12) months, the initial license fee shall be reduced on a pro rata basis.

(8) The application for renewal, restoration, reinstatement, or reactivation shall be denied if the applicant fails to:

(a) Pay any applicable department fee;

(b) Comply with the continuing education requirements established in 815 KAR 2:010; or

(c) Provide the current insurance certificate required by KRS 198B.668, if a master HVAC contractor.

(9) A licensee who has not previously provided a passport-sized color photograph shall provide one (1) with the licensee's next application for renewal.

Section 8. Special Service Fees. In addition to the other fees required by this administrative regulation, the special fees established in this section shall also be applied.

(1) Restoration fee.

(a) The fee for restoration of an expired master HVAC contractor license shall be \$125.

(b) The fee for restoration of an expired journeyman HVAC mechanic license shall be twenty-five (25) dollars.

(2) Inactive status fee. The fee to place a license into inactive status shall be twenty (20) dollars.

(3) Reactivation fee. The fee for reactivation of an inactive license shall be twenty (20) dollars.

(4) Reinstatement fee.

(a) Master HVAC contractor. The fee for reinstatement of a terminated master ~~HVAC~~ contractor ~~license~~ shall be \$250 for each twelve (12) month period, or additional fraction thereof, following the date the license was terminated, not to exceed \$750.

(b) Journeyman HVAC mechanic. The fee for reinstatement of a terminated journeyman HVAC mechanic license shall be fifty (50) dollars for each twelve (12) month period, or additional fraction thereof, following the date the license was terminated, not to exceed \$150.

Section 9. Revocation or Suspension of License. A license issued pursuant to this administrative regulation shall be subject to suspension or revocation by the department for any of the reasons stated in KRS 198B.672.

Section 10. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Master HVAC Contractor License Application", Form HVAC 1, May 2020; ~~and~~

(b) "Journeyman HVAC Mechanic License Application", Form HVAC 2, May 2020; and

(c) "HVAC Examination Registration Form", Form HVAC-4, March 2022.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Heating, Ventilation, and Air Conditioning~~HVAC Division~~, 500 Mero Street, Frankfort, Kentucky 40601~~101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-~~

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5412], Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://dhbc.ky.gov>.

CONTACT PERSON: Benjamin Siegel, General Counsel, Department of Housing, Buildings and Construction, 500 Mero Street, 1st Floor, Frankfort, Kentucky 40601, phone (502) 782-0604, fax (502) 573-1057, email [benjamin.siegel@ky.gov](mailto:benjamin.siegel@ky.gov).

### **CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Administration and Financial Management (As Amended at ARRS, September 13, 2022)**

#### **902 KAR 8:120. Leave provisions applicable to employees of local health departments.**

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870, Chapter 337, 29 C.F.R. Part 825, 29 U.S.C. Chapter 8, 207, 2601, Pub.L. 103-3

STATUTORY AUTHORITY: KRS 194A.050(1), 211.1755(2), (3)(a)1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures of the local health department personnel program. KRS 211.1755(3)(a)1. requires[authorizes] the cabinet to promulgate administrative regulations for local health department personnel leave policies. This administrative regulation establishes work hours, leave, and compensatory time provisions for employees of local health departments.

Section 1. Hours of Work. (1) The normal work week shall consist of thirty-seven and one-half (37.5) hours per week.

(a) The appointing authority shall establish the hours and days of work for the agency or for specific employees.

(b) The work schedule may be changed by the appointing authority to provide for flexibility in meeting particular work requirements of the agency or specific employees whose schedules may require them to work different hours.

(2) Hours worked in excess of the thirty-seven and one-half (37.5) hours during the established work week shall be:

(a) Approved by the appointing authority; and

(b) Subject to compensatory time and overtime provisions of this administrative regulation.

(3) The standard pay period shall consist of seventy-five (75) hours.

(4) An appointing authority, with department approval, may establish a position having special conditions of employment based on the needs of the agency.

(5) The employee who requests and receives consideration for special conditions shall acknowledge acceptance of the special conditions in writing.

Section 2. Earning of Annual Leave. (1) Except for a temporary or an emergency employee, a full-time employee shall earn annual leave credit at the following rate:

Years of Service	Annual Leave Hours Earned Per Pay Period-Per Year of Twenty-six (26) Pay Periods
0 to 5 years	3.5 hours per pay period-91.0 hours per year
5 to 10 years	4.4 hours per pay period-114.4 hours per year
10 to 15 years	5.2 hours per pay period-135.2 hours per year
15 to 20 years	6.1 hours per pay period-158.6 hours per year
20 years or more	7.0 hours per pay period-182 hours per year

(2) Annual leave for a full-time employee shall not accrue unless the employee has been in pay status at least thirty-seven and one-half (37.5) hours of the standard pay period. The employee shall be credited with additional leave credit upon the first day of the pay period following the pay period in which the leave was earned.

(3) Except for a temporary or an emergency employee, a part-time employee, who is designated as serving on a part-time 100 hour basis and is in pay status at least twenty-three (23) hours each pay period, shall earn annual leave credit at the following rate:

Years of Service	Annual Leave Hours Earned Per Pay Period-Per Year of Twenty-six (26) Pay Periods
0 to 5 years	2.1 hours per pay period-54.6 hours per year
5 to 10 years	2.6 hours per pay period-67.6 hours per year
10 to 15 years	3.1 hours per pay period-80.6 hours per year
15 to 20 years	3.6 hours per pay period-93.6 hours per year
20 years or more	4.2 hours per pay period-109.2 hours per year

(4) In computing years of total service for determining the rate of earning annual leave for designated part-time 100 hour employees, only the months the employee was designated as a full-time, part-time 100 hour, or was on educational leave with pay shall be used.

(5) An employee who has retired from a position covered by a state retirement system, is receiving retirement benefits, and returns to an agency, shall not receive credit for months of service prior to retirement.

(6) An employee who has resigned from one (1) agency and returns to another agency as an original appointment shall not receive credit for months of service prior to resignation.

(7) Annual leave shall not accrue unless an employee is working or on authorized leave with pay. Annual leave shall not accrue if an employee is on authorized educational leave with pay.

(8) The maximum amount of annual leave earned by a full-time employee that may be accumulated and carried forward to the next calendar year shall not exceed the following amounts:

Years of Service	Maximum Amount of Annual Leave Earned by Full-time Employees
0 to 5 years	225.0 hours
5 to 10 years	277.5 hours
10 to 15 years	337.5 hours
15 to 20 years	390.0 hours
Over 20 years	450.0 hours

(9) The maximum amount of annual leave for a designated part-time 100 hour employee who works an average of 100 hours per month that may be accumulated and carried forward to the next calendar year shall not exceed the following amounts:

Years of Service	Maximum Amount of Annual Hours Earned by Designated Part-time 100 Employees
0 to[-] 5 years	120 hours
5 to[-] 10 years	148 hours
10 to[-] 15 years	180 hours
15 to[-] 20 years	208 hours
Over 20 years	240 hours

(10) Except as provided for in Section 3(8) of this administrative regulation, annual leave earned in excess of that which is allowed to be accumulated shall be converted to sick leave and credited during the first pay period following the end of the calendar year. Annual leave shall not be granted in excess of that earned.

Section 3. Use of Annual Leave Credit. (1) An employee who has accumulated annual leave credit, upon timely request and subsequent approval of the supervisor, shall be granted leave subject to the operating requirements of the agency.

(2) An employee shall not be charged with annual leave for absence except on a day upon which they would otherwise work and receive pay.

(3) Absence for a fraction or part of a day that is chargeable to annual leave shall be charged in fifteen (15) minute periods.

(4) An employee shall be paid a lump sum for accumulated annual leave, not to exceed the maximum amounts established in Section 2 of this administrative regulation, if separated by proper resignation, layoff, retirement, or change from full-time or part-time 100 hour to part-time. Following payment of annual leave, leave remaining after the payment of the maximum provided in Section 2 of this administrative regulation shall be removed from the balance.

(5) Upon the death of an employee, the employee's estate

shall be entitled to be paid for the unused portion of the employee's accumulated annual leave.

(6) Annual leave shall not be advanced or taken until it is earned.

(7) An absence due to sickness, injury, or disability in excess of accumulated sick leave, may be charged against annual leave if approved by the appointing authority.

(8) An employee who has accumulated annual leave in excess of 275 hours may request payment of an amount of annual leave not to exceed seventy-five (75) hours during the fiscal year of the agency. The requested annual leave payment, if approved by the appointing authority, shall not reduce the employee's balance of annual leave below 275 hours and shall be paid in a manner convenient to the agency.

(9) An appointing authority may require an employee who has a balance of compensatory leave hours to use compensatory leave before the employee's request to use annual leave balance is granted, unless the employee's annual leave balance will exceed the maximum number of hours that may be carried forward pursuant to Section 2(8) and (9) of this administrative regulation.

Section 4. Earning of Sick Leave. (1) A full-time employee, except for an emergency employee, shall earn sick leave at the rate of three and one-half (3.5) hours per pay period.

(a) An employee shall have worked or been in pay status for at least thirty-seven and one-half (37.5) hours of the seventy-five (75) standard hours in each pay period in order to accumulate sick leave.

(b) The employee shall be credited with sick leave upon the first day of the pay period following the pay period in which the leave was earned.

(2) An employee designated as a part-time 100 hour employee, except for an emergency employee, who is in pay status at least twenty-three (23) hours in a pay period shall earn sick leave at the rate of two and one-tenth (2.1) hours per pay period. A part-time 100 hour employee shall be credited with additional sick leave upon the first day of the pay period following the pay period in which the leave was earned.

(3) A full-time employee completing ten (10) years of total service in full-time status with an agency shall be credited with seventy-five (75) additional hours of sick leave.

(4) An employee designated as a part-time 100 hour employee completing ten (10) years of total service in a part-time 100 status with an agency shall be credited with forty-five (45) additional hours of sick leave.

(5) A full-time employee completing 240 months of total service in a full-time status with one (1) or more agencies shall be credited with an additional seventy-five (75) hours of sick leave.

(6) An employee designated as a part-time 100 hour employee completing 240 months of total service in a part-time 100 status with one (1) or more agencies shall be credited with forty-five (45) additional hours of sick leave.

Section 5. Uses of Sick Leave Credit. (1) The appointing authority, upon proper request, may grant sick leave with pay to a full-time or designated part-time 100 hour employee with sufficient leave credit, if the employee:

(a) Receives medical, psychiatric, dental, or optical examination or treatment;

(b) Is disabled by sickness or injury;

(c) Is required to provide care for a sick or injured spouse, child, step-child, parent, step-parent, brother, step-brother, sister, step-sister, grandparent, step-grandparent, grandchild, step-grandchild, mother- or father-in-law, or daughter- or son-in-law;

(d) Would jeopardize the health of others at his or her workstation post because of exposure to a contagious disease;

(e) Has lost by death a spouse, child, step-child, parent, step-parent, brother, step-brother, sister, step-sister, grandparent, step-grandparent, grandchild, step-grandchild, mother- or father-in-law, or daughter- or son-in-law; or

(f) Is required to take the employee's spouse, child, step-child, parent, step-parent, brother, step-brother, sister, step sister, grandparent, step-grandparent, grandchild, step-grandchild,

mother- or father-in-law, or daughter- or son-in-law[;] for medical, psychiatric, dental, or optical examination or treatment.

(2) Accumulated sick leave may be granted for death in the employee's family, as described in subsection (1) of this section, and shall be limited to three (3) days or a reasonable extension at the discretion of the appointing authority.

(3) An employee shall file a written request for sick leave with or without pay within a reasonable time. An employee shall request advance approval for sick leave for medical, dental, or optical examination and for sick leave without pay.

(4) Except for an unexpected absence from work because of an illness, the employee shall notify the employee's supervisor or other designated person in advance. Failure to do so in a reasonable time period may be cause for denial of the sick leave for the period of absence or for disciplinary action.

(5)(a) An appointing authority may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave for the days or hours sick leave is requested.

~~(b) [A supervisor's or employee's certificate may be accepted, but]~~ A medical certificate may be required signed by a licensed practitioner and certifying to the incapacity, examination, and treatment during the time for which sick leave was taken.

~~(c) An appointing authority may grant sick leave if the application is supported by acceptable evidence, but may require confirmation if there is reasonable cause to question the authenticity of the certificate or its contents.~~

(6) If an employee requests leave in excess of five (5) working days, a statement from the employees' licensed practitioner shall accompany the request for leave. The statement shall contain[the following]:

(a) The licensed practitioner's judgment that the employee is incapable of performing the essential duties of the job;

(b) Estimate of the length of time that the employee's illness or disability will last;

(c) Restrictions ~~that[which—would]~~ render the employee incapable of performing the essential duties of the job; and

(d) Recommendation for special considerations to accommodate the employee once released to return to work.

(7) An appointing authority may place an employee on sick leave with or without pay, if:

(a) The employee's health might jeopardize others;

(b) The employee's health prevents performance of job duties and responsibilities;

(c) The employee fails to produce a satisfactory medical certificate upon request; or

(d) The employee exhibits behavior that disrupts the agency's ability to function in providing services or that might endanger the employee or others.

(8) Absence for a fraction or part of a day that is chargeable to sick leave shall be charged in fifteen (15) minute periods.

(9) An employee who is transferred or otherwise changed from one (1) agency to another shall retain accumulated sick leave in the receiving agency.

(10) A former employee who is reinstated or reemployed shall have his or her previous rate of earning annual leave and unused sick leave balances reinstated upon successful completion of probation, if applicable.

(11) Sick leave may be utilized in cases of absence due to illness or injury for which workers' compensation income benefits are received for lost time to the extent of the differences between these benefits and the employee's regular salary.

Section 6. Family and Medical Leave. (1) An appointing authority shall comply with the requirements of the Family and Medical Leave Act (FMLA) of 1993, 29 U.S.C. 2601 et seq., Pub.L. 103-3, and the federal regulations implementing the Act, 29 C.F.R. Part 825.

(2) An employee shall qualify for twelve (12) weeks of unpaid family and medical leave if the employee has:

(a) Completed twelve (12) months of service[services]; and

(b) Worked at least 1,250 hours in the twelve (12) months immediately preceding the first day of family and medical leave.

(3) An employee shall be entitled to a maximum of twelve (12)

weeks of unpaid family and medical leave for the birth, placement, or adoption of the employee's child.

(4) While an employee is on unpaid family and medical leave, the employer contribution for health and life insurance shall be maintained by the employer.

(5) An employee shall use accrued paid leave concurrently with FMLA leave, except an employee may reserve up to ten (10) days of accumulated sick leave while on FMLA leave. If an employee reserves accumulated sick leave, the remaining FMLA leave will be unpaid.

Section 7. Maternity Leave. (1) The appointing authority shall grant a maternity leave of absence to an employee because of pregnancy or the adoption of a child. Maternity leave shall not exceed twelve (12) weeks, unless the appointing authority approves additional maternity leave. However, the total leave shall not exceed twenty-six (26) pay periods.

(2) The employee on maternity leave shall use accumulated sick leave credit if available:

(a) For the period of time medically necessary to be absent from work as indicated by the certification of a licensed practitioner; or

(b) For the period of time for placement of a child for adoption with the employee that includes:

1. Counseling sessions;
2. To appear in court;
3. Consult with attorneys or doctors representing the birth parents;
4. Submit to a physical; or
5. Travel to complete adoption.

(c) If sick leave is not available, the employee shall use accumulated annual or compensatory leave if available.

(d) If leave credit is exhausted, the employee shall be placed on leave without pay.

(3) Accumulated annual and compensatory time shall be used for maternity leave that extends beyond the period of absence that is medically necessary for the employee as certified by the employee's medical practitioner.

(4) The employee shall submit a written request for maternity absence, which shall include a statement from a licensed practitioner indicating the expected date of delivery.

(a) The request shall be submitted to the appointing authority as soon as practical to allow for adjustments in the work schedule during the employee's absence.

(b) Additional information from the employee's licensed practitioner may be required if there are complications and the period of absence begins sooner than agreed, extends further than agreed, or requires the use of maternity leave beyond twelve (12) weeks.

Section 8. Workers' Compensation. (1)(a) The required medical expense for a service rendered by a hospital or doctor, or for a prescribed medication, shall be paid subject to approval of the claim.

(b) A percentage of the employee's average weekly wage shall be paid if the employee is unable to work for an extended period due to a job-related injury or illness.

(c)1. Except as provided in subparagraph 2. of this paragraph, compensation shall not be payable for the first seven (7) days of disability.

2. If the disability continues over two (2) weeks, compensation shall be allowed from the first day of disability.

(2) The appointing authority shall offer an employee one (1) of the following options of compensation for an absence due to illness or injury for which workers' compensation benefits are eligible:

(a) Allow employee to accept the workers' compensation benefits directly and use accumulated leave in order to maintain regular full salary; or

(b) Allow employee to use accumulated leave to maintain regular full salary, or a portion thereof, and remit the workers compensation benefits to the agency to reinstate accumulated leave used for the period of time benefits were paid.

(3) The employee shall not receive and retain the benefit of

paid leave and workers' compensation income benefits that exceeds his or her regular full salary for the same period of time.

Section 9. Sick Leave Without Pay. (1) An appointing authority may approve sick leave without pay upon appropriate request of an employee[for reasons provided for in this section].

(2) An employee shall have used accumulated annual, sick, and compensatory leave credit prior to approved leave without pay.

~~(3) [The amount of continuous sick leave without pay approved by an appointing authority shall not exceed twenty-six (26) pay periods.~~

~~(4)~~ If an employee approved for leave with pay exhausts accumulated annual, sick, and compensatory leave credit, the employee shall be placed on sick leave without pay, if the total absence does not exceed twenty-six (26) pay periods.

~~(4) [(5)]~~ The appointing authority may require periodic statements from a licensed practitioner during the sick leave without pay period attesting to the employee's inability to perform the essential functions of the employee's job duties with or without reasonable accommodation.

Section 10. Return from Sick Leave With or Without Pay. (1) At the termination of sick leave with pay not exceeding thirteen (13) pay periods, the appointing authority shall return the employee to his or her former position.

~~(2)~~ At the termination of sick leave with pay exceeding thirteen (13) pay periods, the appointing authority shall return the employee to a position for which he or she is qualified and that[which] resembles his or her former position as closely as circumstances permit. If the employee is unable to perform the essential functions of the position, and there is no other vacant position for which the employee qualifies and is able to perform, the employee may be laid off.

~~(3) [(2)]~~ If an employee on approved sick leave without pay for less than twenty-six (26) pay periods has given notice of his or her ability to resume his or her duties, the appointing authority shall return the employee to a position for which he or she is qualified and that[which] resembles his or her former position as closely as circumstances permit. If the employee is unable to perform the essential functions of the position, and there is no other vacant position for which the employee qualifies and is able to perform, the employee may be laid off.

~~(4) [(3)]~~ An employee shall be considered to have resigned if the employee:

(a) [4-] Has been on continuous sick leave without pay for twenty-six (26) pay periods;

~~(b) [2-]~~ Has been requested by the appointing authority in writing to return to work at least ten (10) days prior to the expiration of sick leave;

~~(c) [and~~

~~3-]~~ Is unable to return to the employee's former position or to a position for which the employee is qualified and that resembles the former position as closely as circumstances permit;

~~(d) [work; or~~

~~(b) 1-]~~ Has been given priority consideration by the appointing authority for a vacant position with the agency, for which the employee qualifies and is capable of performing its essential functions with or without reasonable accommodation; and

~~(e) [2-]~~ The appointing authority has been unable to place the employee in a vacant position.

Section 11. Sharing of Sick Leave. (1) An employee of the local health department who has accrued a sick leave balance of more than seventy-five (75) hours may, with the approval of the appointing authority, request the transfer of a specified amount of the employee's sick leave balance in excess of seventy-five (75) hours to another named status employee of the local health department who is authorized to receive sick leave.

(2) The appointing authority may approve the amount of sick leave received under this section if:

(a) The employee or a member of his or her immediate family suffers from a medically certified illness, injury, impairment, or physical or psychiatric condition that[which] has caused, or is likely

to cause, the employee to go on leave;

(b) The employee's need for absence and use of leave are certified by a licensed practitioner; and

(c) The employee has exhausted his or her accumulated sick leave, annual leave, and compensatory leave balances.

(3) Leave may be transferred from an employee of one (1) agency to an employee within the same agency or may be transferred from an employee of one (1) agency to an employee of another agency. The agency shall maintain records of leave transferred between employees and the utilization of transferred leave.

(4) If an employee is on leave transferred under this section, he or she shall receive the same treatment with respect to salary, wages, and employee benefits.

(5) Salary and wage payments made to an employee while on leave transferred under this section shall be made by the agency employing the person receiving the leave.

(6) Leave transferred under this section which remains unused shall be returned, on a prorated basis, to the employees who transferred the leave if the appointing authority finds that the leave is no longer needed and will not be needed at a future time in connection with the illness or injury for which the leave was transferred to an employee in his or her agency.

~~(7)~~~~(6)~~ An employee shall not intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce, either directly or indirectly, another employee for the purpose of interfering with the employee's right to voluntarily contribute leave as authorized under this section.

Section 12. Court Leave. An employee shall be entitled to a leave of absence, without loss of pay or time, for each day ~~during which~~ the employee is subpoenaed by a court to serve as a juror or witness, except in a case where the employee or a member of the employee's family is a party plaintiff. If relieved from duty as a juror or witness during normal working hours, the employee shall return to work. An employee shall retain the fees earned while serving as a potential juror.

Section 13. Military Leave. (1) Upon request, an employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from duty without the loss of pay or time to serve under orders on training duty for a period of up to ten (10) working days, not to exceed seventy-five (75) hours in any one (1) federal fiscal (October 1 to September 30) year. The appointing authority, before granting military leave, may require a copy of the orders requiring the attendance of the employee.

(2) The appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of active duty not to exceed six (6) years. Accumulated annual leave and compensatory leave may be paid in lump sum at the request of the employee, upon being placed on leave.

(3) A part-time 100 or full-time status employee, who is a spouse or a member of the U.S. Armed Forces, including a member of a state National Guard or a Reserve component on federal duty, shall receive one (1) day off, with pay, from work when the member is deployed and one (1) day off, with pay, from work when the member returns.

Section 14. Voting Leave. The appointing authority shall allow each employee four (4) hours paid leave to vote, if requested in advance. The absence shall not be charged against accumulated leave.

Section 15. Special Leave of Absence. (1) An appointing authority may grant special leave for education, training, or for other circumstances.

(2) Leave may be granted for a period not to exceed twenty-six (26) pay periods.

(3) Leave may be granted without pay if all other leave has

been exhausted.

(4) Leave for attendance at a college, university, vocational or business school shall be for training in subjects that:

(a) Relate to the employee's work; and

(b) Will benefit the agency.

Section 16. Administrative Leave for Investigative Purposes.

(1) An appointing authority may place an employee on special leave with pay for investigative purposes pending an investigation of a work-related incident or an allegation of employee misconduct.

(2) Leave shall not exceed thirty (30) working days.

(3) The employee shall be notified in writing by the appointing authority that he or she is being placed on special leave for investigative purposes~~;~~ and the reasons for being placed on leave.

(4) If the investigation reveals no misconduct by the employee:

(a) The employee shall be made whole for the period of the leave; and

(b) Records relating to the investigation shall be purged from agency files.

(5) The appointing authority shall notify the employee, in writing, of the completion of the investigation and the action taken. Notification shall be made to the employee, whether the employee has remained with the agency, or has voluntarily resigned during the interim between being placed on special leave for investigative purposes and the completion of the investigation.

Section 17. Absence Without Leave. (1) An employee who is absent from duty without prior approval shall report the reason for the absence to the employee's supervisor immediately.

(2) Unauthorized or unreported absence shall:

(a) Be considered absence without leave;

(b) Be treated as leave without pay for an employee covered by the provisions of the Fair Labor Standards Act, 29 U.S.C. Chapter 8; and

~~(c) [deduction of pay may be made by the appointing authority for each period of absence.~~

~~(3) Absence without leave may~~ constitute grounds for disciplinary action.

(3) A deduction of pay may be made by the appointing authority for each period of absence.

(4) An employee who has been absent without leave or notice to the supervisor for more than three (3) working days shall be considered to have resigned the employee's position.

Section 18. Holidays. (1) Agency full-time employees shall be given a holiday on the following days:

(a) The first day of January and one (1) extra day;

(b) The third Monday in January;

(c) One-half (1/2) day for Good Friday (3.75 hours);

(d) The last Monday in May;

(e) The fourth day of July;

(f) The first Monday in September;

(g) The 11th day of November;

(h) The fourth Thursday in November plus one (1) extra day;

(i) The 25th of December and one (1) extra day; and

(j) Presidential election day.

(2) If a day enumerated in subsection (1) of this section falls on a Saturday, the preceding Friday shall be observed as the holiday. If the day enumerated falls on a Sunday, the following Monday shall be observed as the holiday. If an extra day is provided for, it shall be observed as stated by the department.

(3) A full-time employee shall be in pay status on the work day prior to the holiday in order to receive the holiday benefit.

(4) Full-time exempt employees required to work on a holiday shall accrue compensatory time for the time worked.

Section 19. Absences Due to Adverse Weather. (1) An employee who chooses not to report to work, or who leaves early, in the event of adverse weather conditions, shall have the absence:

(a) Charged to annual or compensatory leave; or

(b) Taken as leave without pay, if annual and compensatory



leave has been exhausted.

(2) An employee who is on prearranged annual, compensatory, or sick leave shall charge leave as originally requested unless the agency closes down. Once the agency closes, ~~down~~ all employees are paid other paid leave.

(3) If catastrophic, life-threatening weather conditions occur, such as that created by hurricane, tornado, flood, or blizzard, and it becomes necessary for authorities to order evacuation or shutdown of the place of employment, the following provisions shall apply:

(a) An employee who is required to evacuate or who would report to a location that has been shut down shall not be required to make up the time lost from work during the period officially declared hazardous to life and safety.

(b) An employee who is required to work in an emergency situation shall be compensated pursuant to Section 20 of this administrative regulation.

Section 20. Earning of Compensatory Time. (1) An employee determined to be exempt under the provisions of the Fair Labor Standards Act, 29 U.S.C. 207, and Kentucky Wage and Labor Law, KRS Chapter 337, authorized by the appointing authority to work in excess of the prescribed thirty-seven and one-half (37.5) hours of duty in one (1) week shall accumulate compensatory time in fifteen (15) minute periods for excess time worked on an hour-for-hour basis. The maximum amount of compensatory time accumulated shall be 200 hours.

(2) An employee shall have the prior approval of the appointing authority or the employee's immediate supervisor before compensatory leave may be earned.

(3) A nonexempt employee authorized by the appointing authority to work in excess of the prescribed thirty-seven and one-half (37.5) hours of duty in one (1) week shall be paid at the employee's current salary for each hour not subject to the provisions of the Fair Labor Standards Act, 29 U.S.C. 207, and Kentucky Wage and Labor Law, KRS Chapter 337.

(4) Any time worked in excess of forty (40) working hours in one (1) week shall be paid overtime at a rate of one and one-half (1 1/2) for each hour exceeding forty (40) working hours. Holiday pay and other types of non-working hours paid are not included in the total number of working hours subject to time and a half overtime pay.

Section 21. Using Accumulated Compensatory Time. (1) An employee who has accrued compensatory time shall be permitted by the appointing authority to take compensatory time off if practical and upon proper request by the employee.

(2) An employee who has accumulated at least thirty (30) hours of compensatory time may be paid for the accumulated leave by the appointing authority upon written request. If payment is approved by the appointing authority, it shall be at the employee's regular rate of pay and in thirty (30) hour increments.

(3) If an employee has accumulated the maximum amount of compensatory leave, the appointing authority shall pay the employee for at least fifty (50) hours of accumulated compensatory leave at the employee's regular rate of pay and shall reduce the employee's compensatory leave balance accordingly.

(4) Upon separation from service or transfer to another agency, unused compensatory time shall be reimbursed in a lump sum payment to the employee.

(5) Upon the death of an employee, the employee's estate shall be paid for unused accumulated compensatory time.

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

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Medicaid Services**  
**Division of Policy and Operations**  
**(As Amended at ARRS, September 13, 2022)**

**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 of this administrative regulation;

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

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

(d) Maximum allowable cost or MAC, plus the professional dispensing fee, as established in Section 3 of this administrative regulation; 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 Notice 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 Notice 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 ~~material is [documents are]~~ incorporated by reference:

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

(b) "Kentucky Medicaid 340B Participation **Notice Form**", 2022; ~~and~~ [.]

(c) "Kentucky Medicaid 340B Nonparticipation **Notice 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>].

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

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING  
OR RECEIPT OF WRITTEN COMMENTS

TOURISM, ARTS AND HERITAGE CABINET  
Heritage Council  
(Amended After Comments)

300 KAR 6:011. Historic rehabilitation tax credit certifications.

RELATES TO: KRS 171.396, 171.3961, 171.3963, 171.397, 42 U.S.C. 12101, 54 U.S.C. 300101, 36 C.F.R. 67, 36 C.F.R. 800, [42 U.S.C. 12101]

STATUTORY AUTHORITY: KRS 171.397(12), (14)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.397(12) and (14) authorize[~~authorizes~~] the Kentucky Heritage Council to promulgate administrative regulations to implement the certified historic structures rehabilitation tax credit and to impose fees for tax credit applications. This administrative regulation establishes the application process to determine a taxpayer's eligibility to claim a certified historic structure rehabilitation tax credit.

Section 1. Definitions. (1) "Act" means the enabling legislation for the historic rehabilitation tax credit, KRS 171.396 through[~~to~~] 171.397.

(2) "Adjusted basis of the structure" means the purchase price of the property, minus the cost of land, plus improvements already made, minus allowable depreciation.

(3) "Certified historic structure" is defined by KRS 171.396(1).

(4) "Certified rehabilitation" is defined by KRS 171.396(2).

(5) "Certified rehabilitation credit cap" is defined by KRS 171.396(3).

(6) "Complete and adequately documented" means the applicant has provided all elements established[~~outlined~~] in the Part 1, 2, 3 or KHC Form TC-4[~~application~~], fee payment, adequate photo documentation prior to rehabilitation[~~at the time of purchase~~] and documentation of[~~documenting~~] any subsequent changes by current owner, photo key, maps, and related architectural renderings or construction documents.

(7) "Completed rehabilitation project" means any certified historic structure that[~~which~~] has been substantially rehabilitated and, after the completion date, has been submitted by the applicant to the council for final certification of rehabilitation under the Act.

(8) "Completion date" means:

(a) For owner-occupied residential property, the month, date, and year in which the last eligible rehabilitation expense is incurred; or

(b) For all other property, the month, date, and year in which[~~when~~] the rehabilitation project is completed to allow occupancy of the entire building or some identifiable portion of the building and, if applicable, a certificate of occupancy has been issued.

(9) "Department" means the Kentucky Department of Revenue.

(10) "Director" means the executive director of the Kentucky Heritage Council.

(11) "Disqualifying work" is defined by KRS 171.396(5).

(12) "Exempt entity" is defined by KRS 171.396(6).

(13) "File" or "filed" means physical receipt by the council of an application for certification along with the tender of the appropriate review fee.

(14) "Final amount of credit approved" means the individual credit awarded for certified rehabilitation to an owner of a certified historic structure as determined pursuant to KRS 171.3961 or KRS 171.397, whichever is applicable, upon filing of[~~when~~] the Certificate of Rehabilitation-Part 3 [~~is filed~~] and upon approval[~~approved~~] by the council.

(15) "Inspection" means a visit by the director or an authorized representative of the council to a property for the purposes of reviewing and evaluating the significance of the structure and the ongoing or completed rehabilitation work.

(16) "Meaningful consultation" means[~~is~~] the opportunity to

consult with a historic building owner prior to the removal of historic fabric or work that does not meet the Secretary of the Interior's Standards for Rehabilitation as established in Section 4(2) of this administrative regulation.

(17) "National Register of Historic Places" means the National Register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture that the U. S. Secretary of the Interior is authorized to expand and maintain pursuant to Section 101(a)(1) of the National Historic Preservation Act of 1966, 54 U.S.C. 300101, and implemented through 36 C.F.R. Part 800.

(18) "Owner" means:

(a) The person, partnership, corporation, public agency, or other entity holding a fee simple interest in a property, or any other person or entity recognized by the department for purposes of the applicable tax benefit under KRS 171.397 or KRS 171.3961, whichever is applicable; or

(b) A lessee, if the remaining term of the lease is not less than twenty-seven and one-half (27 1/2) years for residential property or thirty-nine (39) years for all other property.

(19) "Owner-occupied residential property" is defined by KRS 171.396(8).

(20) "Preliminary tax credit allocation" means the maximum individual credit available for certified rehabilitation to an owner of a certified historic structure as determined pursuant to KRS 171.397, on April 29 of the year in which the Certificate of Rehabilitation-Parts 1 and 2 are filed and approved by the council.

(21) "Property" means a building and its site and landscape features.

(22) "Qualified rehabilitation expense" is defined by KRS 171.396(9).

(23) "Rehabilitation" means the process of returning a building or buildings to a state of utility, through repair or alteration, which makes possible an efficient use while preserving those portions and features of the building and its site and environment that[~~which~~] are significant to its historic, architectural, or[~~and~~] cultural values [~~as determined by the director~~].

(24) "Rehabilitation plan" means a plan pursuant to which a certified historic structure will be substantially rehabilitated.

(25) "Rehabilitation project" means any certified historic structure, submitted by the applicant to the council, for certifications of rehabilitation under the Act.

(26) "Standards for rehabilitation" mean the Secretary of the Interior's Standards for Rehabilitation, 36 C.F.R. 67.7, as established by the U. S. Department of Interior and restated in Section 4(2) of this administrative regulation.

(27) "Starting date" means the date upon which the applicant applies for the building permit for work proposed by the rehabilitation plan or the date upon which actual physical work contemplated by the plan of rehabilitation begins.

(28) "Substantial rehabilitation" is defined by KRS 171.396(10).

(29) "Taxpayer" is defined by KRS 171.396(11).

Section 2. Certifications of Rehabilitation. (1) For tax credits under KRS 171.3961, a request for certification of historic significance and of rehabilitation under the Act shall be a five (5) stage process that requires the filing of the following forms:

(a) Certification Application-Intent to Apply for Expanded Credit;

(b) Certification Application Part 1-Evaluation of National Register Status;

(c) Certification Application Part 2-Description of Rehabilitation;

(d) Certification Application Part 3-Request for Certification of Completed Work; and

(e) [~~Certification Application~~]-Summary of Investment and Election of Credit.

(2) For tax credits under KRS 171.397, a request for certification of historic significance and of rehabilitation under the Act shall be a four (4) stage process that requires the filing of the following forms:

(a) Certification Application Part 1-Evaluation of National Register Status;

(b) Certification Application Part 2-Description of Rehabilitation;

(c) Certification Application Part 3-Request for Certification of Completed Work; and

(d) Certification Application-Summary of Investment and Election of Credit.

(3) Intent to Apply for Expanded Credit shall be a request for certification of an applicant's intent to claim a tax credit established by KRS 171.3961 for a proposed rehabilitation project.

(4) Part 1 shall be a request for certification of historic significance.

(5) Part 2 shall be a request for certification of a proposed rehabilitation project.

(6) Part 3 shall be a request for certification of a completed rehabilitation project.

(7) Summary of Investment and Election of Credit shall be actual cost, square footage, and use attributed to the rehabilitation work and an irrevocable election by the taxpayer to receive a refundable credit or transfer the credit.

(8) Certification of applications shall be filed with the council as established in paragraphs (a) through (c) of this subsection.[follows:]

(a) 1. Part 1 and Part 2 shall be filed with the council on or before April 29 for a preliminary determination of maximum credit eligibility for a credit under KRS 171.397.

2. Part 1, Part 2, and Intent to Apply for Expanded Credit shall be filed with the council on or before June 30, 2015, for a credit under KRS 171.3961.

(b) 1. Part 1 and Part 2 may be filed after rehabilitation has commenced, but an applicant who begins rehabilitation prior to receiving Part 2 certification shall assume[assumes] the risk that certification may be denied.

2. If rehabilitation has commenced prior to receiving Part 2 certification, the applicant shall[is required to] check a corresponding box on the Part 2 form that may prompt an inspection by council staff to determine level of completeness.

3. If it is determined that demolition or[and/or] rehabilitation has progressed beyond the point at which[where] "meaningful consultation" can be carried out, the council shall notify the applicant within thirty (30) days of inspection that a foreclosure on the agency's opportunity to comment on the rehabilitation plan has occurred and the application is closed.

4. Application[Any application] or review fees that have been paid shall[may] be refunded.

5. A taxpayer may appeal a determination of foreclosure.

a. An appeal shall be submitted by filing an appeal in writing within thirty (30) days of notification to the council board.

b. The council board shall either confirm the determination or reverse the determination based on compliance with this administrative regulation. with instructions to return the application to council staff for standard processing and review.

c. The council shall decide the appeal and shall notify the taxpayer of the decision in writing within thirty (30) days from the date the appeal is considered at the regularly scheduled council meeting if[where] a quorum is present.

(c) Part 3 and Summary of Investment and Election of Credit shall be filed with the council after the completion date of a completed rehabilitation project for a final determination of credit.

(9) If at any stage an application is not approved by the council, the rehabilitation project shall not qualify as a certified rehabilitation for purposes of the Act.

Section 3. Certifications of Historic Significance-Part 1. (1) Application. The Certification Application Part 1-Evaluation of National Register Status form shall be [timely] filed with the council for certification of historic significance.

(a) Property individually listed in the National Register of Historic Places. Individually listed property shall be considered a certified historic structure for purposes of the Act subject to confirmation by the council based on compliance with the requirements established in this administrative regulation. The following information shall be provided by the applicant:

1. Names and mailing addresses of owners;

2. Name and address of property;

3. Photographic documentation of the building and property prior to and after alteration, showing exterior and interior features and spaces to ensure that the listed property has not lost the characteristics that[which] caused it to be listed on the National Register of Historic Places;

4. Descriptions of all the buildings within the listing if the property contains more than one (1) building for the purpose of determining which of the buildings are of historic significance to the property;

5. Brief description of appearance including alterations, distinctive features and spaces, and dates of construction;

6. Brief statement of significance summarizing how the property reflects the values that give its distinctive historical and visual character, and explaining any significance attached to the property itself;

7. A copy of a map indicating where the subject property is located. If an individually-listed property is also located in a historic district listed in the National Register of Historic Places, a copy of the map of the National Register historic district where the subject property is located and a clear delineation of the property's location within the district shall also be included; and

8. Signatures of owners requesting confirmation of listing in the National Register of Historic Places or concurring in the request if the owners are not the applicants.

(b) Property located in a historic district listed in the National Register of Historic Places. If the property is located in historic district listed in the National Register of Historic Places, an applicant shall request that the property be certified by the council as a historic structure contributing to the significance of a historic district and provide the[. The following information shall be provided]:

1. Names and mailing addresses of owners;

2. Name and address of property;

3. Name of historic district;

4. Photographic documentation of the building and property prior to and after alteration, showing exterior and interior features and spaces, and photographic documentation of adjacent properties and structures on the street showing significance to the historic district;

5. Brief description of appearance including alterations, distinctive features and spaces, and dates of construction;

6. Brief statement of significance summarizing how the property reflects the values that give the district its distinctive historical and visual character, and explaining any significance attached to the property itself;

7. A copy of the map of the National Register historic district where the subject property is located and a clear delineation of the property's location within the district; and

8. Signatures of owners requesting certification or concurring in the request if the owners are not the applicants.

(2) Multiple structures. A property containing more than one (1) building shall be treated as a single certified historic structure if the council determines that the buildings have been functionally related[functionally-related] historically to serve an overall purpose, whether the property is individually listed in the National Register or is located within a registered historic district. Buildings that are functionally related historically shall be those that[which] have functioned together to serve an overall purpose during the property's period of significance.

(3) Standards for evaluating significance.

(a) In addition to the existing National Register documentation, an application for certification of historic significance shall contain documentation with information about the significance of the specific buildings and structures.

(b) A property located within a historic district listed in the National Register of Historic Places shall be evaluated for contribution to the historic significance of the district by applying the [following] standards established in subparagraphs 1. through 3. of this paragraph.[:]

1. A property contributing to the historic significance of a district shall be a property that[which] by location, design, setting,

materials, workmanship, ~~concept~~~~[feeling]~~, and association adds to the district's sense of time and place and historical development~~;~~~~]~~

2. A property not contributing to the historic significance of a district shall be a property ~~that~~~~[which]~~ does not add to the district's sense of time and place and historical development; or a property in which~~[where]~~ the location design, setting, materials, workmanship, ~~concept~~~~[feeling]~~ and association have been so altered or have so deteriorated that the overall integrity of the property has been irretrievably lost~~;~~~~]~~ and]

3. If the building was built within the past fifty (50) years, it shall not be considered to contribute to the significance of a district, unless a strong justification concerning its historical or architectural merit is given or the historical attributes of the district are considered to be less than fifty (50) years old.

(c) An evaluation of historic significance shall be made based upon the appearance and condition of the property before rehabilitation was begun.

(d) The qualities of a property and its environment ~~that~~~~[which]~~ qualify it as a certified historic structure shall be determined taking into account all available information, including information derived from the physical and architectural attributes of the building, and shall not be limited to information contained in the National Register nomination reports.

(e) If a nonhistoric surface material obscures a façade, it may be necessary to remove the surface materials prior to requesting certification so that a determination of significance can be made. After the material has been removed, if the obscured façade has retained substantial historic integrity and the property otherwise contributes to the historic district, it shall be determined to be a certified historic structure.

(4) Review of Part 1 Applications.

(a) A complete and adequately-documented Certification Application Part 1-Evaluation of National Register Status form shall be reviewed by the council to determine if the property contributes to the historic significance of the district by applying the standards established in subsection (3) of this section.

(b) After consideration of the information contained in the application and other available information, the council shall approve the application if:

1. The property meets the standards for evaluating for significance established in subsection (3) of this section; or

2. The director confirms that the property is individually listed in the National Register of Historic Places.

(5)~~(a)~~ If the application is not adequate to complete the review, the council shall attempt to notify the applicant by mail, telephone, or e-mail using the contact information provided on the application.

~~(b)~~ The applicant's failure to respond ~~shall~~~~[may]~~ result in ~~[denial of]~~the application ~~being closed~~.

~~(c)~~ The council's notification or failure to notify shall not constitute a waiver of a deficiency or an alteration of a time limitation established under the Act.

(6) An applicant shall notify the council of any substantial damage, alteration, or changes to a property that occurs after issuance of a Certification of Part 1-Evaluation of National Register Status. The council may, upon thirty (30) days written notice to the applicant, withdraw a certification of historic significance and may seek to have the property removed from the National Register under 36 C.F.R. 800.

Section 4. Certifications of Rehabilitation-Part 2. (1) Applications.

(a) A Certificate of Application Part 2-Description of Rehabilitation form shall be ~~[timely]~~filed with the council for certification that a rehabilitation plan is a substantial rehabilitation and meets the standards for rehabilitation established in subsection (2) of this section.

(b) A rehabilitation project shall be done according to a rehabilitation plan.

(c) The burden shall be upon the applicant to supply sufficient information to the council for a determination that the rehabilitation plan is a substantial rehabilitation and meets the standards for rehabilitation established in subsection (2) of this section.

(d) An application shall include the~~[ following information]~~:

1. Names and mailing addresses of owners;
2. Name and address of property;
3. Designation of whether the application is for owner-occupied residential property or other property;
4. Information sufficient to establish the proposed use of the structure;
5. ~~Adjusted~~~~[The adjusted]~~ basis for the property if other than owner-occupied residential or owned by an exempt entity;
6. Proposed starting date and completion date;
7. Projected qualified rehabilitation expenses;
8. Numbered photographs adequate to document the appearance of the structure, both on the interior and exterior, and its site and environment before rehabilitation that correspond to numbered positions on existing plans;
9. ~~Taxpayer~~~~[The taxpayer]~~ identification number or Social Security number;
10. Written detailed description of existing features and their conditions, and a written description of proposed rehabilitation work and the impact on existing features;
11. Plans for any attached, adjacent, or related new construction, if applicable; and
12. Signatures of owners requesting certification or concurring in the request if the owners are not the applicant.

(2) Standards for rehabilitation.

(a) The standards for rehabilitation shall be the criteria used to determine if the rehabilitation qualifies as a certified historic rehabilitation. Rehabilitation shall be consistent with the historic character of the structure or structures and, if applicable, the district in which it is located.

(b) A rehabilitation project shall meet all of the standards for rehabilitation established in this paragraph.

1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.

2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.

3. Each property shall be recognized as a physical record of its time, place, and use. A change that creates a false ~~impression~~~~[sense]~~ of historical development, such as adding a conjectural feature or architectural element from another building, shall not be undertaken.

4. Changes to the property that have acquired historic significance in their own right shall be retained and preserved.

5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.

6. Deteriorated architectural features shall be repaired rather than replaced. If the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, if possible, materials. Replacement of missing architectural features shall be substantiated by documentary, physical, or pictorial evidence.

7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.

8. Significant archeological resources affected by a project shall be protected and preserved. If these resources shall be disturbed, mitigation measures shall be undertaken.

9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.

10. New additions and adjacent or related new construction shall be undertaken in ~~[such]~~a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

~~(c)1.~~ The quality of materials, craftsmanship, and related new construction in rehabilitation shall match the quality of materials,

craftsmanship, and design of the historic structure~~[in question]~~.

2. Certain treatments, if improperly applied, or certain materials by their physical properties, ~~can~~**[may]** cause or accelerate physical deterioration of historic buildings, and use of these treatments or materials shall result in denial of certification.

3. The burden shall be upon the applicant to consult with the council for a determination as to what rehabilitation measures are appropriate for the structure.

4. Inappropriate rehabilitation measures on historic properties shall include:

~~a.[1.]~~ Improper masonry repointing materials and techniques;

~~b.[2.]~~ Improper exterior masonry cleaning methods;

~~c.[3.]~~ Improper introduction of insulation if damage to historic fabric would result; and

~~d.[4.]~~ Incompatible additions and new construction.

(d) The council may consider the dismantling and rebuilding of a portion of a certified historic structure to stabilize and repair weakened structural members and systems as a certified historic rehabilitation if:

1. The necessity for dismantling is justified in supporting documentation;

2. Significant architectural features and overall design are retained; and

3. Adequate historic materials are retained to maintain the architectural and historic integrity of the overall structure.

(3) Substantial rehabilitation. A rehabilitation project shall be a substantial rehabilitation only if the requirements of KRS 171.396(9) and (10) are met. To determine ~~if~~**[whether]** a rehabilitation project is a substantial rehabilitation, the conditions established in this subsection shall apply.

(a) Increases to the adjusted basis of the structure shall include capital improvements to the structure, legal fees incurred for perfecting title, and zoning costs. Any depreciation previously claimed for the structure shall be subtracted from this figure.

(b) If a cost only partially qualifies as an eligible rehabilitation expense because some of the cost is attributable to the enlargement of the building, the expenditures shall be apportioned proportionately between the original portion of the building and the enlargement.

(c) In addition to the expenses listed in KRS 171.396(9), qualified rehabilitation expenses shall include:

1. The cost of work done to structural components of the building within the footprint of the historic structure if ~~the components~~**[they]** are permanent;

2. Costs related to new heating, plumbing, and electrical systems, as well as expenses related to updating kitchens and bathrooms, compliance with the Americans with Disabilities Act of 1990, ~~42 U.S.C. 12101~~**[ ]**; and fire suppression systems and fire escapes; and

3. The cost of architectural and engineering fees, site survey fees, legal expenses, development fees, and other construction-related costs, if those costs are added to the basis of the property.

(d) In addition to the exclusions listed in KRS 171.396(9), qualified rehabilitation expenses shall not include the construction costs for a new building, parking lot, or sidewalk.

(4) Review of Part 2 Applications.

(a) A complete and adequately documented Certification Application Part 2- Description of Rehabilitation shall be reviewed by the council for a determination that the rehabilitation plan is a substantial rehabilitation and meets the standards for rehabilitation **established in subsection (2) of this section**. Applicants that do not meet this standard ~~shall~~**[will]** be notified via email and given ~~ten (10)~~**[40]** days to submit missing elements; otherwise, the project ~~shall~~**[will]** be placed on hold and removed from the allocation pool until KHC certifies that the Part 2 constitutes a complete and adequately documented application.

(b) After consideration of the information contained in the application and other available information, the council shall issue a preliminary certification of rehabilitation if the rehabilitation plan is a substantial rehabilitation and meets the standards for rehabilitation established in subsection (2) of this section.

(5)(a) If the application is not adequate to complete the review or if revisions to the rehabilitation project are necessary to meet the

standards of rehabilitation established in subsection (2) of this section, the council shall attempt to notify the applicant by mail, telephone, or e-mail using the contact information provided on the application.

(b) An applicant's failure to respond ~~shall~~**[may]** result in denial of the application.

(c) The council's notification or failure to notify shall not constitute a waiver of a deficiency or an alteration of a time limitation established under the Act.

(6) Changes to rehabilitation plans. Once a rehabilitation plan has been approved by the council, an applicant may only make substantive changes in the work ~~stated~~**[described]** in the application by:

(a) Filing a Certification Application-Continuation/Amendment form with the council; and

(b) Receiving notification from the council that the revised plan continues to meet the standards of rehabilitation established in subsection (2) of this section and is a substantial rehabilitation.

Section 5. Certifications of Rehabilitation-Part 3 Completed Work. (1) Application. Upon completion of a rehabilitation project, an applicant shall file a Certification Application Part 3-Request for Certification of Completed Work form with the council for final certification of rehabilitation. An application shall include the **following information**:

(a) Names and mailing addresses of owners;

(b) Name and address of property;

(c) Designation of whether the application is for owner-occupied residential property or other property;

(d) Actual starting date and completion date;

(e) Actual qualified rehabilitation expenses;

(f) Photographs adequate to document the appearance of the structure, both on the interior and exterior, and its site and environment during and after rehabilitation;

(g) ~~Taxpayer~~**[The taxpayer]** identification number or Social Security number; and

(h) Signatures of owners or a representative authorized to sign on behalf of the owner requesting certification.

(2) Summary of Investment and Election of Credit. In addition to filing a Certification Application Part 3-Request for Certification of Completed Work form, the applicant shall file a Summary of Investment and Election of Credit form with the council. The Summary of Investment and Election of Credit shall include the **following**:

(a) Names and mailing addresses of the owners;

(b) Name and address of the property;

(c) Actual costs attributed to the rehabilitation work;

(d) Signatures of the owners or a representative authorized to sign on behalf of the owner;

(e) Notarization of the signatures if the property is an owner-occupied residence or, for all other property, compilation by a certified public accountant or equivalent of the actual costs attributed to the rehabilitation of the historic structure; and

(f) An irrevocable election by the taxpayer to:

1. Use the credit, in which case, the credit shall be refundable;

or

2. Transfer the credit, pursuant to KRS 171.397(8).

(3) Scope of review.

(a)1. Rehabilitation shall encompass all work on the interior and exterior of the certified historic structure or structures and the site and environment, ~~as determined by the council,~~ as well as related demolition, new construction, or rehabilitation work ~~that could~~**[which may]** affect the historic qualities, integrity or site, landscape features, and environment of the certified historic structure.

2. Conformance to the standards of rehabilitation established in Section 4(2) of this administrative regulation shall be determined on the basis of application documentation and other available information by evaluating the property as it existed prior to the commencement of rehabilitation.

(b) A phased rehabilitation project shall not be ~~authorized~~**[permitted]**. Starting April 30, 2022, a Part 2 application ~~shall~~**[may]** not be submitted if a building has already

received a Part 2 allocation from a previous year that has not yet been certified or if the owner has not relinquished that allocation in writing.

(c) Portions of a completed rehabilitation project that are not in conformance with the standards for rehabilitation shall not be exempted and shall[may] result in denial of the Certification Application Part 3-Request for Certification of Completed Work.

(4) Review of Part 3 Applications. A complete and adequately documented Certification Application Part 3 - Request for Certification of Completed Work shall be reviewed by the council for a determination that the completed rehabilitation project is a certified rehabilitation and a determination of the final amount of credit approved. The council shall issue a final certification of rehabilitation if ~~[all the following requirements have been met]~~:

(a) All elements of the completed rehabilitation project meet the standards for rehabilitation as established in Section 4(2) of this administrative regulation;

(b) The completed rehabilitation project was a substantial rehabilitation; and

(c) Part 3 was filed with the council after the completion date.

(5) If the application is not adequate to complete the review or if revisions to the rehabilitation project are necessary to meet the standards of rehabilitation established in Section 4(2) of this administrative regulation, the council shall attempt to notify the applicant by mail, telephone, or e-mail using the contact information provided on the application. Applicant's failure to respond shall[may] result in denial of the application. The council's notification or failure to notify shall not constitute a waiver or alteration of time limitations established under the Act.

Section 6. Recapture of Preliminary Tax Credit Allocation For Credits Under KRS 171.397. (1) Notice of Recapture. For tax credits under KRS 171.397, if an owner fails to obtain a Certification of Completed Work within thirty-six (36) months from the date of the taxpayer's preliminary allocation of tax credit, the director shall mail to the owner written notice of recapture of the preliminary tax credit allocation.

(2) Objection.

(a) If the owner objects to the recapture of the preliminary allocation of tax credit, the owner shall file written notice of objection accompanied by a supporting statement establishing[setting forth] grounds for objection within forty-five (45) days of the date of the notice of recapture.

(b) If the owner does not timely object, the preliminary tax credit allocation shall be recaptured by the council and added to the certification rehabilitation credit cap for the next calendar year, pursuant to KRS 171.397(2)(c).

(3) Reinstatement. Within thirty (30) days of receipt of the owner's notice of objection, the council shall review the objection and determine if the owner has provided reasonable grounds as established in subsection (5) of this section to reinstate the preliminary allocation.

(a) If the council determines that the preliminary tax credit allocation shall be reinstated, the:

1. Council shall give the owner written notice that the preliminary tax credit allocation has been reinstated for an additional twenty-four (24) months;

2. Owner shall pay a review fee for a Part 2 application in the amount established in Section 10(2) of this administrative regulation, whichever is applicable; and

3. Owner shall obtain a signed Part 3-Request for Certification of Completed Work (TC-3 form) on or before the expiration of twenty-four (24) months. If the owner fails to obtain a Certification of Completed Work or fails to request an extension under subsection (4) of this section, the council shall initiate recapture of the preliminary tax credit allocation under the procedures established in this section.

(b) If the council determines that the preliminary tax credit allocation shall not be reinstated:

1. The council shall give the owner written notice that the preliminary tax credit allocation has not been reinstated;

2. The owner shall be given thirty (30) days from the date of the notice that the preliminary tax credit allocation has not been

reinstated to file an appeal, pursuant to Section 8 of this administrative regulation; and

3. If the owner fails to file a timely appeal, pursuant to Section 8 of this administrative regulation:

a. The preliminary allocation shall not be reinstated;

b. The preliminary tax credit allocation shall be recaptured by the council; and

c. The preliminary tax credit allocation shall be added to the certification rehabilitation credit cap for the next calendar year, pursuant to KRS 171.397(2)(c).

(4) Extension of Preliminary Tax Credit Allocation. (a) At any time prior to expiration of thirty-six (36) months from the date of the taxpayer's preliminary allocation of tax, an owner may request in writing that the preliminary tax credit allocation be extended for a period of twenty-four (24) months if the owner:

1. ~~Provides[Owner Provides]~~ written documentation of reasonable grounds established in subsection (5) of this section for an extension; and

2. Pays[Owner Pays] a review fee for a Part 2 application in the amount established in Section 10(2) of this administrative regulation, whichever is applicable.

(b) Prior to the expiration of the twenty-four (24) month extension, the owner may request another extension under the procedures established in this subsection. There shall not be a limit on the number of extensions that an owner may request.

(5) Grounds for Reinstatement or Extension.

(a) Reasonable grounds shall be documentation of on-going efforts to obtain financial, legal, material, or physical resources necessary to complete the rehabilitation project or documentation that the delay in completion of the rehabilitation project is necessary and unavoidable.

(b) Reasonable grounds shall not include casualty loss or demolition to the extent that the structure no longer qualifies as a certified historic structure, inability to qualify as a substantial rehabilitation, or inability or unwillingness to perform work conditioned by the council and necessary to qualify the project as a certified rehabilitation.

(c) The number of prior reinstatements or extensions shall not be a factor in determining if a reinstatement or extension shall be granted.

Section 7. Inspection. The director or an authorized representative of the council shall be authorized[permitted] to conduct an inspection of the property at any time up to three (3) years after the council has issued a Certification of Completed Work to determine if the work meets the standards for rehabilitation established in Section 4(2) of this administrative regulation.

Section 8. Appeal. A taxpayer may appeal a determination that the rehabilitation project does not qualify as a certified rehabilitation for purposes of the Act. An appeal shall be filed[by filing an appeal] in writing, in care of the council, to the director or a reviewing officer designated by the director to hear an appeal. (1) An appeal shall be made within thirty (30) days of the date of receipt of the determination being appealed.

(2) The director or the reviewing officer shall decide, based solely upon the record developed by the council, if the council:

(a) Reached incorrect conclusions of law;

(b) Made clearly erroneous factual findings;

(c) Did not consider relevant facts; or

(d) Abused the discretion available to that person.

(3) The director's or reviewing officer's decision shall:

(a) Confirm the determination;

(b) Reverse the determination due to[on-account of] incorrect conclusions of law; or

(c) Remand the matter to the council for further proceedings.

(4) The director or reviewing officer shall decide the appeal and shall notify the taxpayer of the decision in writing within thirty (30) days from the date the appeal is received.

(5) If the appeal is decided by a reviewing officer and the reviewing officer affirms the determination, the taxpayer may appeal the reviewing officer's determination in writing to the director. An appeal shall be[.] pursuant to this subsection.



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(a) An appeal to the director shall be filed within the time period established in subsection (1) of this section.

(b) The director shall use the same standards of review established in subsection (2) of this section.

(c) The director shall:

1. Confirm the decision of the reviewing officer;

2. Reverse the determination due to~~[on account of]~~ incorrect conclusions of law; or

3. Remand the matter to the council for further proceedings.

(d) The director shall decide the appeal and shall notify the taxpayer of the decision in writing within thirty (30) days from the date the appeal is received.

Section 9. Revocation of Owners' Certifications. (1) If, after obtaining final certification of rehabilitation, the council determines that the rehabilitation was not undertaken as represented by the owner in the applications, amendments, or supporting documentation, or the owner upon obtaining final certification undertook disqualifying work, the council may revoke a certification by giving written notice to the owner.

(2) The owner may file an appeal, pursuant to Section 8 of this administrative regulation.

(3) If the owner fails to file a timely appeal, the final certification of rehabilitation shall be revoked.

Section 10. Fees for Processing Rehabilitation Certification Requests.

(1)(a) Payment of fees for review of Parts 2 and 3 shall be filed with the council with~~[when]~~ applications~~[are filed]~~ and shall be~~[are]~~ nonrefundable.

(b) Certification shall not be issued until the appropriate remittance is received.

(c) Payment shall be made by check or money order payable to the Kentucky State Treasurer.

(2) For tax credits under KRS 171.397, fees for reviewing rehabilitation certification requests of owner-occupied residential property, commercial, and other buildings shall be charged in accordance with the table established in this subsection~~[following schedule]~~. If a Part 2 application is denied, there shall not be a charge for a Part 3 review.

Rehabilitation Costs for Owner-Occupied Residences, Commercial and Other Buildings	Part 2 Review Fee	Part 3 Review Fee
\$20,000 - \$50,000	\$150.00	\$150.00
\$50,001 - 100,000	\$250.00	\$250.00
\$100,001 - \$250,000	\$375.00	\$375.00
250,001 - \$500,000	\$500.00	\$500.00
\$500,001 - \$6,000,000	.15% of estimate eligible costs and expenses	.15% of estimate eligible costs and expenses
Over \$6,000,000	\$9,000.00	\$9,000.00

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

(a) "Certification Application Part 1-Evaluation of National Register Status", KHC Form TC-1, Rev. 2022;

(b) "Certification Application Part 2-Description of Rehabilitation", KHC Form TC-2, Rev. 2022;

(c) "Certification Application Part 3-Request for Certification of Completed Work", KHC Form TC-3, Rev. 2022;

(d) "Certification Application-Continuation/Amendment", KHC Form TC-2a, Rev. 2022;~~[and]~~

(e) "Summary of Investment and Election of Credit", KHC Form TC-4, Rev. 2022; and

(f) Intent to Apply for Major Rehabilitation, KHC Form TC-00, Rev. 2022;

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Heritage Council, 410 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

(3) This material is also available on the Council's Web site at

<https://heritage.ky.gov/historic-buildings/rehab-tax-credits/Pages/guides.aspx>.

CRAIG POTTS, Executive Director

MICHAEL E. BERRY, Secretary

APPROVED BY AGENCY: September 9, 2022

FILED WITH LRC: September 9, 2022 at 8:30 a.m.

CONTACT PERSON: Craig Potts, Executive Director, 410 High Street, Frankfort, Kentucky 40601, phone (502) 564-7005, fax (502) 564-5820, email [craig.potts@ky.gov](mailto:craig.potts@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Craig Potts

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the framework to implement the Kentucky Historic Rehabilitation Tax Credit program. It was anticipated that a new regulation reflecting significant changes made to the corresponding KRS during the 2021 legislative session would be adopted in advance of the current KAR's expiration in February 2022. That deadline could not be met. Included within this regulation is a fee structure that has not been increased since the program's implementation in 2005. Addressing this problem along with updates to the program's implementation and management is the focus of this proposed administrative regulation change.

(b) The necessity of this administrative regulation: This emergency regulation reinstates and updates a long-standing but outdated (and recently expired) version. If not corrected, the newly expanded/enhanced Kentucky Historic Preservation Tax Credit Program's implementation will remain at risk. Kentucky currently has one of the lowest fee structures for state historic tax credit review in the United States. This is largely because we have not revised our rates in many years despite a wide variety of changes in the marketplace and the actual financial cost to the agency. The Kentucky Historic Preservation Tax Credit program has become very popular since the program was adopted in 2005, and the amount of work required for staff reviews (particularly for multi-million-dollar rehabilitation projects) has increased dramatically. Furthermore, the Kentucky Legislature increased the program cap from \$5M per year to \$100M per year in the 2021 legislative session which is anticipated to significantly increase the size and complexity of the workload in future years. We therefore propose to raise our review fees to be more in-line with industry standards and peer states and to account for the financial burden it places on the agency.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The basic structure of the administrative regulation remains largely unchanged in this proposal. It is slightly simplified in that it provides one tiered fee for all property and applicant types instead of two. KRS 171.397 provides that the Kentucky Heritage Council can impose fees for processing applications for tax credits, not to exceed the actual cost associated with processing the applications. The proposal is based on 1) staff time/cost 2) direct expense related to travel, mailings, technology infrastructure, software, etc. 3) fees charged for Federal Tax Credit review (federal counterpart program), and 4) fees charged by other states. Estimated cost to the Kentucky Heritage Council for implementing the current tax credit program (capped at \$5M per year) is \$120 - \$150k per year while the estimated current income from fees is \$68k per year. This does not consider future costs to the agency when the \$100M program cap goes into effect on July 1, 2022 or any additional enhancements to the program that are likely to result from the current legislative session.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Current funding levels are not sufficient to maintain adequate levels of staffing/service to carry out the program efficiently or effectively. Increasing our fee revenue will support the delivery of service including review/processing capacity.

(2) If this is an amendment to an existing administrative

regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Tiered fee that has been in place since 2005 would be increased. It also includes several clarifications and adds a review component for projects that are not being directly incentivized by the Kentucky Historic Preservation Tax Credit program. Projects that have been largely or fully completed in advance of an application being submitted are not motivated by the incentive and should therefore be excluded. Furthermore, these projects have often implemented design decisions outside of the review and approval process that do not conform to the program requirements. This change to the regulation attempts to curtail or at least limit post project reviews that have little to no opportunity for meaningful consultation.

(b) The necessity of the amendment to this administrative regulation: This emergency regulation reinstates and updates a long-standing but outdated (and recently expired) version. If not corrected, the newly expanded/enhanced Kentucky Historic Preservation Tax Credit Program's implementation will remain at risk. The Kentucky Heritage Council has needed a fee increase for many years to support the administration of this program. The current staffing levels are unsustainable and our delivery of service to our constituents has suffered. The 20-fold increase to the program's cap makes this fee increase even more imperative. Furthermore, it is important that this program remain an incentive for rehabilitation. The agency has experienced issues over the years with applications that are too complete for meaningful consultation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 171.397 provides that the Kentucky Heritage Council can impose fees for processing applications for tax credits, not to exceed the actual cost associated with processing the applications.

(d) How the amendment will assist in the effective administration of the statutes: Current funding levels are not sufficient to maintain adequate levels of staffing/service to carry out the program efficiently. Increasing our fee revenue will support the delivery of service including review/processing capacity.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All of the above could be affected by this revised administrative regulation. The Kentucky Historic Preservation Tax Credit is an incentive program and fully optional however, so no one would be required to pay the higher fee unless they chose to participate. State Government, and namely the Kentucky Heritage Council, would greatly benefit from fees that would better address the direct and indirect administrative cost to the agency.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No new action. The Part 1 and Part 2 Review Fee would be higher but the process would remain largely unchanged. An exception would be the option of the council to reject a project as ineligible due to substantial levels of completeness.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The higher review fee is tied to the level of incentive being received by the applicant. The incentive is based on expenditure, so a \$30M project receiving a \$6M Historic Tax Credit will require significantly more review time and coordination than a small project that would be charged (as it is now) a smaller review fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): We have had many conversations with developers and other users of this incentive program about an efficient review process. They consistently tell us that they would be happy to pay more in review fees if that meant we could better administer the program. These funds will support our capacity and

provide applicants with better accessibility to staff and support faster review times. This will help projects that are often time sensitive receive the approval needed to move forward.

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

(a) Initially: Minor change. No cost anticipated.

(b) On a continuing basis: Minor change. No cost anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Minor change. No additional funding needed to administer the administrative regulation change.

(7) Provide an assessment of whether an 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. Minor change. Fee increase to applicants.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes. This administrative regulation change would directly increase existing fees.

(9) TIERING: Is tiering applied? The Kentucky Historic Preservation Tax Credit was implemented in 2005, and with the exception of owner-occupied projects, this incentive can often be utilized in tandem with the federal credit. Key provisions are:

30% of qualified rehabilitation expenses for owner-occupied residential properties. A minimum investment of \$20,000 is required, with the total credit not to exceed \$60,000

20% of qualified rehabilitation expenses for all other properties, requiring a minimum investment of \$20,000 or the adjusted basis, whichever is greater. The total credit for a project must not exceed \$400,000

"Other" properties include commercial and industrial buildings, income-producing properties, historic landscapes and properties owned by governments and non-profit organizations

Those eligible to apply for the credit include:

Individuals  
Businesses  
Non-profit organizations  
Governments

A "first purchaser" of a principal residence following rehabilitation

Currently the amount of historic preservation tax credits allowed for all taxpayers for each calendar year is \$5 million. If that limit is exceeded by approved projects, an apportionment formula will be applied to determine the amount of the credit that will be awarded per project. As a result, the final credit awarded to each project may be less than the entire percentage for which the project is eligible. With the program cap increase from \$5 million to \$100 million in the last legislative session, it is unlikely that an apportionment formula will have to be 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? This is an incentive program that is not mandatory for any public or private entity to take part in. That said, local governments may participate and earn a transferable tax credit that can be monetized. Local governments currently pay a fee to process Historic Preservation Tax Credit applications. That fee would increase for them as well as private sector applicants.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 171.397(12) and (14) authorizes the Kentucky Heritage Council to promulgate administrative regulations to implement the certified historic structures rehabilitation tax credit and to impose fees for tax credit applications.

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

is a relatively minor change to an optional incentive program. No effect anticipated other than a higher and more reasonable fee schedule to support the administration of this popular program.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Unsure. We anticipate our workload to increase by at least three times the current amount due to legislative increases in the program cap. Additional revenue will be tied to the number of applications received in a given 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? Unsure. We anticipate our workload to increase by at least three times the current amount due to legislative increases in the program cap. Additional revenue will be tied to the number of applications received in a given year.

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

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

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

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: The proposed administrative regulation change would increase the fee at all investment levels to support the basic administration of the program. The number, type and size and investment level of projects received for review from year to year varies dramatically. Most projects are anticipated to be on the low end of the tier meaning that the additional fee will be small on a per project basis. Looking at the program as a whole however, the additional fees should better cover the costs to the agency that are not being covered by the existing tier of fees.

(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 will result in no cost savings for regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This will result in no cost savings for regulated entities.

(c) How much will it cost the regulated entities for the first year? Variable. This is a fee attached to an optional incentive program. Costs to regulated entities are directly tied to the financial benefit they will receive from the Kentucky Historic Preservation Tax Credit program.

(d) How much will it cost the regulated entities for subsequent years? Variable. This is a fee attached to an optional incentive program. Costs to regulated entities are directly tied to the financial benefit they will receive from the Kentucky Historic Preservation Tax Credit program.

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

Cost Savings (+/-): 0

Expenditures (+/-): 0

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)]. Not applicable. There is no additional cost to charge and/or process the fees.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Public Health**  
**Division of Epidemiology and Health Planning**  
**(Amended After Comments)**

**902 KAR 2:020. Reportable disease surveillance.**

RELATES TO: KRS 214.645, 214.625(5)(c)5, 214.990(1), 215.520, 216B.015, 258.065, 258.990, 311.282, 311.571, 315.010, 321.181(4), 333.020, 333.130

STATUTORY AUTHORITY: KRS 194A.050, 211.090(3), 211.180(1)(a), 214.010

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.180(1)(a) authorizes the cabinet to implement a statewide program for the detection, prevention, and control of communicable diseases, chronic and degenerative diseases, dental diseases and abnormalities, occupational diseases and health hazards peculiar to industry, home accidents and health hazards, animal diseases that are transmissible to man, and other diseases and health hazards that can be controlled. KRS 214.010 requires every physician, advanced practice registered nurse, and every head of family to notify the local health department of the existence of diseases and conditions designated by administrative regulation of the cabinet. This administrative regulation establishes notification standards and specifies the diseases requiring immediate, urgent, priority, routine, or general notification, in order to facilitate rapid public health action to control diseases and to permit an accurate assessment of the health status of the commonwealth.

Section 1. Definitions. (1) "Acid fast bacilli" or "AFB" means the mycobacteria that, if stained, retains color even after having been washed in an acid solution and can be detected under a microscope in a stained smear.

(2) "Health facility" is defined by KRS 216B.015(13).

(3) "Health professional" means a professional licensed under KRS Chapters 311 through 314.

(4) "Healthcare-associated infection" or "HAI" means an infection acquired by a person while receiving treatment for a separate condition in a health care setting.

(5) "Kentucky public health advisory" means a notification to health professionals, health facilities, and laboratories subject to this administrative regulation identifying a new health threat that warrants reporting through the procedures of this administrative regulation.

(6) "Laboratory-confirmed influenza" means influenza diagnosed through testing performed using:

(a) Reverse transcriptase polymerase chain reaction (RT PCR);

(b) Nucleic acid detection; or

(c) Viral culture.

(7) "Medical laboratory" is defined by KRS 333.020(3).

(8) "National Healthcare Safety Network" or "NHSN" means the nation's most widely used healthcare-associated infection (HAI) tracking system as provided to medical facilities by the Centers for Disease Control and Prevention (CDC).

(9) "National reference laboratory" means a laboratory located outside of Kentucky that is contracted by a Kentucky health professional, laboratory, or health facility to provide laboratory testing.

(10) "Novel influenza A virus" means an influenza virus that causes human infection but is different from the seasonal human influenza A virus subtypes and includes viruses predominately of avian and swine origin.

(11) "Nucleic acid amplification test" or "NAAT" means the laboratory test used to target and amplify a single deoxyribonucleic acid (DNA) or ribonucleic acid (RNA) sequence, usually for detecting a microorganism.

(12) "Outbreak" means:

(a) Two (2) or more cases, including HAIs, that are epidemiologically linked or connected by person, place, or time; or  
(b) A single case of an HAI not commonly diagnosed.

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

(14) "Post-exposure prophylaxis" or "PEP" means taking an

antiretroviral medicine after being potentially exposed to HIV to prevent becoming infected.

(15) "Pre-exposure prophylaxis" or "PrEP" means daily medicine intended to reduce the chance of getting HIV.

(16) "Select agent" means a biological agent or toxin that could pose a severe threat to public health, plant health, animal product, or plant product as determined by the National Select Agent Registry (NSAR) at [www.selectagents.gov](http://www.selectagents.gov).

(17) "Veterinarian" is defined by KRS 321.181(4).

Section 2. Notification Standards. (1) Health professionals and facilities.

(a) A health professional or a health facility shall give notification if:

1. The health professional or a health facility makes a probable diagnosis of a disease specified in Section 3, 6, 7, 8, 9, 12, 16, 17, 18, or 19 of this administrative regulation; and

2. The diagnosis is supported by:

a.(i) Clinical or laboratory criteria; and

(ii) Case classifications published by the Centers for Disease Control and Prevention at [https://ndc.services.cdc.gov/\[www.cdc.gov/ndcs\]](https://ndc.services.cdc.gov/[www.cdc.gov/ndcs]); or

b. A health professional's medical opinion that the disease is present.

(b) A single report by a health facility of a condition diagnosed by a test result from the health facility's laboratory shall constitute notification on behalf of the health facility and its laboratory.

(c) A health facility may designate an individual to report on behalf of the health facility's laboratory, pharmacy, and the health facility's other clinical entities.

(d) Notification shall be given to the local health department serving the county in which the patient resides.

(e) If the local health department cannot be reached, notification shall be given to the Kentucky Department for Public Health.

(f) The reporting health professional or health facility shall submit:

1. Information required in Section 5(6) of this administrative regulation; and

2. Clinical, epidemiologic, and laboratory information pertinent to the disease including sources of specimens submitted for laboratory testing.

(2) Medical Laboratories.

(a) A laboratory test result that indicates infection with an agent associated with one (1) or more of the diseases or conditions specified in Section 3, 6, 7, 8, 9, 12, 16, 17, 18, or 19 of this administrative regulation shall be reported to the local health department serving the county in which the patient resides.

(b) If the local health department cannot be reached, notification shall be given to the Kentucky Department for Public Health.

(c) The reporting laboratory shall submit the information required in Section 5(6) of this administrative regulation.

(3) National Reference Laboratories.

(a) A test result performed by a national reference laboratory that indicates infection with an agent associated with one (1) or more of the diseases or conditions specified in Section 3, 6, 7, 8, 9, 12, 16, 17, 18, or 19 of this administrative regulation shall be reported by the director of a medical laboratory, a health facility, or the health professional that referred the test to the national reference laboratory to the local health department serving the county in which the patient resides.

(b) If the local health department cannot be reached, notification shall be given to the Kentucky Department for Public Health.

(c) The report shall include the information required by Section 5(6) of this administrative regulation.

Section 3. Submission of Specimens to the Kentucky Department for Public Health Division of Laboratory Services. (1) A medical laboratory and a national reference laboratory in receipt of diagnostic specimens originating from the Commonwealth of Kentucky shall send direct specimens or pure clinical isolates for

diseases established in subsection (5) of this section to the Division of Laboratory Services for primary or confirmatory testing and related studies.

(2) A medical laboratory or national reference laboratory using non-culture techniques to identify bacterial agents of diarrheal disease, such as enzyme immunoassays (EIAs) or molecular assays, shall attempt isolation of the etiologic agent identified. Pure clinical isolates shall be submitted to the Division of Laboratory Services.

(3) If the culture attempts do not produce a clinical isolate, the direct specimen, submitted in the appropriate preservative, shall be sent to the Division of Laboratory Services. A submitting laboratory shall provide the name of the etiologic agent detected by the non-culture technique at the time of specimen submission.

(4) A medical laboratory performing this test shall continue to follow the state's requirement for the submission of appropriate materials to the state public health laboratory.

(5) A medical or national reference laboratory shall submit pure isolates or, if not available, the direct specimen from the following diseases to the Division of Laboratory Services:

(a) Botulism, with prior approval from the Division of Epidemiology for testing;

(b) Brucellosis;

(c) Campylobacteriosis;

(d) Candida auris;

(e) Carbapenem-resistant Acinetobacter;

(f) Carbapenem-resistant Enterobacteriaceae;

(g) Carbapenem-resistant Pseudomonas;

(h) Cholera and diseases caused by other Vibrio species;

(i) Diphtheria;

(j) Escherichia coli O157:H7;

(k) Hemolytic Uremic Syndrome (HUS) – Post Diarrheal;

(l) Listeriosis;

(m) Measles;

(n) Meningococcal infections;

(o) Rabies, animal;

(p) Rubella;

(q) Salmonellosis;

(r) Shiga toxin-producing E. coli (STEC);

(s) Shigellosis;

(t) Tuberculosis (TB);

(u) Tularemia;

(v) Typhoid fever;

(w) Vancomycin-intermediate Staphylococcus aureus;

(x) Vancomycin-resistant Staphylococcus aureus; and

(y) Zika, with prior approval from the Division of Epidemiology for testing.

(6) All direct specimens or clinical isolates from enteric disease shall be submitted within seventy-two (72) hours from collection.

Section 4. Laboratory Testing and Submission of Specimens to the Division of Laboratory Services for the Identification of M. tuberculosis. (1) For the identification of M. tuberculosis, a medical laboratory or national reference laboratory shall perform AFB smear and culture, regardless of rapid molecular testing results (NAAT).

(2) Rapid molecular testing shall be performed for the identification of M. tuberculosis on:

(a) Any diagnostic specimen with an AFB smear positive result; or

(b) Any specimen that originates from an individual with clinical or epidemiological evidence suggesting active tuberculosis.

(3) If rapid molecular testing cannot be performed by the medical laboratory or national reference laboratory, the diagnostic specimen shall be sent to the Division of Laboratory Services.

(4) A medical laboratory or national reference laboratory that has a diagnostic specimen test positive for M. tuberculosis by rapid molecular testing shall send the remainder of that specimen to the Division of Laboratory Services.

(5) Any diagnostic specimen found to be positive for M. tuberculosis by rapid molecular testing or culture testing shall be reported in accordance with Section 7 of this administrative regulation.

Section 5. Reporting Classifications and Methods. (1) Immediate reporting.

(a) A report required by Section 12(1) and (2) of this administrative regulation to be made immediately shall be:

1. Made by telephone to the local health department serving the county in which the patient resides; and
2. Followed up by electronic or fax submission to the local health department serving the county in which the patient resides within one (1) business day.

(b) Upon receipt of a report for a disease requiring immediate reporting, the local health department shall:

1. Notify the Kentucky Department for Public Health by telephone; and
2. Assist the department in carrying out a public health response.

(c) Weekend, evening, or holiday immediate notification. If local health department personnel cannot be contacted directly, notification shall be made by telephone using an emergency number provided by the local health department or the Kentucky Department for Public Health.

(d) For the protection of patient confidentiality, a report using the emergency number shall include:

1. The name of the condition being reported; and
2. A telephone number that can be used by the department to contact the reporting health professional or health facility.

(2) Urgent reporting.

(a) A report made within twenty-four (24) hours as required by Section 6 of this administrative regulation shall be:

1. Submitted electronically, by fax, or by telephone to the local health department serving the county in which the patient resides; and
2. If submitted by telephone, followed up by electronic or fax submission to the local health department serving the county in which the patient resides within one (1) business day.

(b) Upon receipt of a report for a disease requiring urgent reporting, the local health department shall:

1. Notify the Kentucky Department for Public Health; and
2. Assist the department in carrying out a public health response.

(c) Weekend, evening, or holiday urgent notification. If local health department personnel cannot be contacted directly, notification shall be made by telephone using an emergency number provided by the local health department or the Kentucky Department for Public Health.

(d) For the protection of patient confidentiality, notification using the emergency number shall include:

1. The name of the condition being reported; and
2. A telephone number that can be used by the department to contact the reporting health professional or health facility.

(3) Priority reporting.

(a) A report made within one (1) business day as required by Section 7, 11, 12(3), 17(4), or 18 of this administrative regulation shall be:

1. Submitted electronically, by fax, or by telephone to the local health department serving the county in which the patient resides; and
2. If submitted by telephone, followed up by electronic or fax submission of a report to the local health department serving the county in which the patient resides within one (1) business day.

(b) Upon receipt of a report for a disease requiring priority reporting, a local health department shall:

1. Investigate the report and carry out public health protection measures; and
2. Notify the Kentucky Department for Public Health of the case by electronic or fax submission within one (1) business day.

(c) The reporting health department may seek assistance in carrying out public health measures from the Kentucky Department for Public Health.

(4) Routine reporting.

(a) A report made within five (5) business days, as required by Section 8, 9, 10, 13(1), 16(1), 17(7), or 20(1) of this administrative regulation, shall be made electronically, by fax, or by mail to the

local health department serving the county in which the patient resides.

(b) Upon receipt of a report of a disease or condition requiring routine reporting, a local health department shall:

1. Make a record of the report;
2. Answer inquiries or render assistance regarding the report if requested by the reporting entity; and
3. Forward the report to the Kentucky Department for Public Health by electronic or fax submission of a report, or in writing within five (5) business days.

(5) General reporting. A report made within three (3) months, as required by Section 19 of this administrative regulation, shall be made electronically, by fax, or by mail.

(6) Reporting requirements.

(a) A report submitted by fax or by mail shall be made using one (1) of the following reporting forms:

1. EPID 200, Kentucky Reportable Disease Form;
2. EPID 250, Kentucky Reportable MDRO Form, to be used for priority reporting;
3. EPID 394, Kentucky Reportable Disease Form, Hepatitis Infection in Pregnant Women or Child (aged five (5) years or less);
4. EPID 399, Perinatal Hepatitis B Prevention Form for Infants;
5. Adult HIV Confidential Case Report Form; or
6. Pediatric HIV Confidential Case Report Form.

(b) Case reports may be made electronically through the Kentucky Health Information Exchange. Electronic case reports shall include the information required by paragraph (c) of this subsection.

(c) Information to be reported. Except as provided in subsections (1)(d) and (2)(d) of this section, a report required by this administrative regulation shall include:

1. Patient name;
2. Date of birth;
3. Gender;
4. Race;
5. Ethnicity;
6. Patient address;
7. County of residence;
8. Patient telephone number;
9. Name of the reporting medical provider or facility;
10. Address of the reporting medical provider or facility; and
11. Telephone number of the reporting medical provider or facility.

(d)[(e)] A reporting health professional shall submit the information listed in this subsection and Section 2(1)(f) of this administrative regulation.

Section 6. Notifiable Infectious Conditions Requiring Urgent Notification. (1) Notification of the following diseases shall be considered urgent and shall be made within twenty-four (24) hours:

- (a) Anthrax;
- (b) Botulism;
- (c) Brucellosis (multiple cases, temporally or spatially clustered);
- (d) Diphtheria;
- (e) Hepatitis A, acute;
- (f) Measles;
- (g) Meningococcal infections;
- (h) Middle East Respiratory Syndrome-associated Coronavirus (MERS-CoV) disease;
- (i) Multi-system Inflammatory Syndrome in Children (MIS-C);
- (j) Novel influenza A virus infections;
- (k) Orthopox virus infection, including:
  1. Monkeypox;
  2. Smallpox; and
  3. Vaccinia;
- (l) Plague;
- (m)[(h)] Poliomyelitis;
- (n)[(m)] Rabies, animal;
- (o)[(n)] Rabies, human;
- (p)[(e)] Rubella;
- (q)[(p)] Severe Acute Respiratory Syndrome-associated Coronavirus (SARS-CoV) disease;

**(r)(q)** Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) (the virus that causes COVID-19) in accordance with subsection (2) of this section;

**[(r) Smallpox;]**

(s) Tularemia;

(t) Viral hemorrhagic fevers due to:

1. Crimean-Congo Hemorrhagic Fever virus;
2. Ebola virus;
3. Lassa virus;
4. Lujo virus;
5. Marburg virus; or
6. New world arenaviruses including:
  - a. Guanarito virus;
  - b. Junin virus;
  - c. Machupo virus; and
  - d. Sabia virus; and
- (u) Yellow fever.

(2) To track the spread of Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2), the virus that causes COVID-19, the following reporting is required:

(a) Laboratory reports of:

1. Positive and negative test results for SARS-CoV-2 viral detection using ~~[antigen—or]~~ Nucleic Acid Amplification Test (NAAT), including polymerase chain reaction (PCR);

2. Positive test results for SARS-CoV-2 viral detection using antigen immunoassays; and

3. SARS-CoV-2 molecular sequencing[; and

3. Positive test results for IgM or IgG antibodies to SARS-CoV-2 nucleocapsid protein].

(b) Health professional case report when:

1. A COVID-19 diagnosis of a patient for whom a laboratory report is not independently submitted;
2. A COVID-19 diagnosis of a patient is admitted to an inpatient medical facility; or
3. There is a COVID-19 associated mortality.

**(3)(a) A laboratory shall report positive test results for Orthopox viral detection using Nucleic Acid Amplification Test (NAAT), including polymerase chain reaction (PCR).**

**(b) A laboratory may report negative and equivocal test results for monkeypox viral detection using NAAT, including PCR.**

Section 7. Notifiable Infectious Conditions and Notifiable Non-Infectious Conditions Requiring Priority Notification. Notification of the following diseases or conditions shall be considered priority and shall be made within one (1) business day:

(1) Arboviral diseases, neuroinvasive and non-neuroinvasive, including:

(a) California serogroup virus diseases, including diseases caused by:

1. California encephalitis virus;
2. Jamestown Canyon virus;
3. Keystone virus;
4. La Crosse virus;
5. Snowshoe hare virus; and
6. Trivittatus viruses;

(b) Chikungunya virus disease;

(c) Eastern equine encephalitis virus disease;

(d) Powassan virus disease;

(e) St. Louis encephalitis virus disease;

(f) Venezuelan equine encephalitis disease;

(g) West Nile virus disease;

(h) Western equine encephalitis virus disease; and

(i) Zika virus disease or infection or the birth of a child to a mother who was Zika-positive or Zika-inconclusive during any stage of pregnancy or during the periconceptional period;

(2) Brucellosis (cases not temporally or spatially clustered);

(3) Campylobacteriosis;

(4) Carbon monoxide poisoning;

(5) Cholera;

(6) Cryptosporidiosis;

(7) Cyclosporiasis;

(8) Dengue virus infections;

(9) Escherichia coli O157:H7;

(10) Foodborne disease outbreak;

(11) Giardiasis;

(12) Haemophilus influenzae invasive disease;

(13) Hansen's disease (leprosy);

(14) Hantavirus infection, non-Hantavirus pulmonary syndrome;

(15) Hantavirus pulmonary syndrome (HPS);

(16) Hemolytic uremic syndrome (HUS), post-diarrheal;

(17) Hepatitis B, acute;

(18) Hepatitis B infection in a pregnant woman;

(19) Hepatitis B infection in an infant or a child aged five (5) years or less;

(20) Newborns born to Hepatitis B positive mothers at the time of delivery;

(21) Influenza-associated mortality;

(22) Legionellosis;

(23) Leptospirosis;

(24) Listeriosis;

(25) Mumps;

(26) Norovirus outbreak;

(27) Pertussis;

(28) Pesticide-related illness, acute;

(29) Psittacosis;

(30) Q fever;

(31) Rubella, congenital syndrome;

(32) Salmonellosis;

(33) Shiga toxin-producing E. coli (STEC);

(34) Shigellosis;

(35) Streptococcal toxic-shock syndrome;

(36) Streptococcus pneumoniae, invasive disease;

(37) Tetanus;

(38) Toxic-shock syndrome (other than Streptococcal);

(39) Tuberculosis;

(40) Typhoid fever;

(41) Varicella;

(42) Vibriosis; and

(43) Waterborne disease outbreak.

Section 8. Notifiable Infectious Conditions and Notifiable Non-Infectious Conditions Requiring Routine Notification. Notification of the following diseases shall be considered routine and shall be made within five (5) business days:

(1) Acute Flaccid Myelitis;

(2) Anaplasmosis;

(3) Babesiosis;

(4) Coccidioidomycosis;

(5) Creutzfeldt-Jakob disease;

(6) Ehrlichiosis;

(7) Hepatitis C, acute;

(8) Hepatitis C infection in a pregnant woman;

(9) Hepatitis C infection in an infant or a child aged five (5) years or less;

(10) Newborns born to Hepatitis C positive mothers at the time of delivery;

(11) Histoplasmosis;

(12) Laboratory-confirmed influenza;

(13) Lead poisoning;

(14) Lyme Disease;

(15) Malaria;

(16) Spotted Fever Rickettsiosis (Rocky Mountain Spotted Fever);

(17) Toxoplasmosis; and

(18) Trichinellosis (Trichinosis).

Section 9. Notifiable Infectious Conditions Requiring Routine Notification by Electronic Laboratory Reporting. (1) Notification of the following shall be considered routine and shall be electronically reported to the Kentucky Department for Public Health through the Kentucky Health Information Exchange within five (5) business days:

(a) Hepatitis B laboratory test results, which shall:

1. Be reported as positive or negative; and

2. Include the serum bilirubin levels or serum alanine aminotransferase taken within ten (10) days of the test of a patient who has tested positive;

(b) Hepatitis C laboratory test results, which shall:

1. Be reported as positive or negative; and

2. Include the serum bilirubin levels or serum alanine aminotransferase taken within ten (10) days of the test of a patient who has tested positive; or

(c) Varicella laboratory test results reported as positive for:

1. Isolation of varicella virus from a clinical specimen;

2. Varicella antigen detected by direct fluorescent antibody test; or

3. Varicella-specific nucleic acid detected by polymerase chain reaction (PCR).

(2) Reports made pursuant to this section shall include a diagnosis.

Section 10. Multi-Drug Resistant Organisms and Other Organisms Requiring Routine Notification by Electronic Laboratory Reporting. (1) Notification of the following diseases shall be considered routine and shall be electronically reported to the Kentucky Department for Public Health through the Kentucky Health Information Exchange within five (5) business days:

(a) *Clostridioides* (formerly *Clostridium*) *difficile* (*C. difficile*) identified from a positive laboratory test result for *C. difficile* toxin A or B (includes molecular assays {PCR} or toxin assays) or a toxin-producing organism detected by culture or other laboratory means performed on a stool sample;

(b) Enterobacteriaceae species resistant to ceftazidime, ceftriaxone, or cefotaxime;

(c) Methicillin-resistant *Staphylococcus aureus* (MRSA), which includes *S. aureus* cultured from any specimen that tests oxacillin-resistant, cefoxitin-resistant, or methicillin-resistant by standard susceptibility testing methods, or by a laboratory test that is FDA-approved for MRSA detection from isolated colonies. These methods may also include a positive result by any FDA-approved test for MRSA detection; and

(d) Vancomycin-resistant *Enterococcus* species (VRE), only those identified to the species level, that are resistant to Vancomycin by standard susceptibility testing methods or by results from any FDA-approved test for VRE detection from specific specimen sources.

(2) The report of an organism under this section shall include the:

(a) Date of specimen collection;

(b) Source of specimen;

(c) Susceptibility pattern; and

(d) Name of the ordering health professional.

(3) Upon a test result performed by a medical laboratory that indicates infection with an agent associated with one (1) or more of the diseases or conditions or a multi-drug resistant organism specified in this section, the director of the medical laboratory shall electronically report the result to the Kentucky Department for Public Health through the Kentucky Health Information Exchange within five (5) days.

(4) The report shall include a diagnosis.

Section 11. Multi-drug Resistant Organisms and Other Organisms Requiring Priority Reporting by EPID 250 and by Electronic Laboratory Reporting to the Kentucky Department for Public Health through the Kentucky Health Information Exchange within One (1) Business Day. Notification of the following diseases shall be considered priority:

(1) *Candida auris* - Laboratory Criteria for Diagnosis shall include:

(a) Confirmatory laboratory evidence for detection of *Candida auris* from any body site using either culture or a culture independent diagnostic test (for example, Polymerase Chain Reaction {PCR}); or

(b) Presumptive laboratory evidence for detection of *Candida haemulonii* from any body site using a yeast identification method that is not able to detect *Candida auris*, and either the isolate or specimen is not available for further testing, or the isolate or

specimen has not yet undergone further testing;

(2) Carbapenem-resistant – *Acinetobacter* – Any *Acinetobacter* species testing resistant to imipenem, meropenem, or doripenem, with minimum inhibitory concentration (MIC) value greater than or equal to eight (8) µg/mL by standard susceptibility testing methods, or by identification of a carbapenemase using a recognized test;

(3) Carbapenem-resistant Enterobacteriaceae (CRE) – Any Enterobacteriaceae species testing resistant to imipenem, meropenem, or doripenem, with MIC value greater than or equal to four (4) µg/mL, or ertapenem with MIC value greater than or equal to two (2) µg/mL, by standard susceptibility testing methods, or by identification of a carbapenemase using a recognized test;

(4) Carbapenem-resistant – *Pseudomonas* – Any *Pseudomonas* species testing resistant to imipenem, meropenem, or doripenem, with MIC value greater than or equal to eight (8) µg/mL by standard susceptibility testing methods, or by identification of a carbapenemase using a recognized test;

(5) Vancomycin-intermediate *Staphylococcus aureus* (VISA), which includes *S. aureus* cultured from any specimen having a MIC of four (4) to eight (8) µg/mL for vancomycin per standard laboratory methods; and

(6) Vancomycin-resistant *Staphylococcus aureus* (VRSA), which includes *S. aureus* cultured from any specimen having a MIC of greater than or equal to sixteen (16) µg/mL for vancomycin per standard laboratory methods.

Section 12. Newly Recognized Infectious Agents, HAI Outbreaks, Emerging Pathogens, and Pathogens of Public Health Importance. (1) The following shall be reported immediately by telephone to the Kentucky Department for Public Health:

(a) A suspected incidence of bioterrorism caused by a biological agent;

(b) Submission of a specimen to the Kentucky Division of Laboratory Services for select agent identification or select agent confirmation testing; or

(c) An outbreak of a disease or condition that resulted in multiple hospitalizations or death.

(2) An unexpected pattern of cases, suspected cases, or deaths that could indicate the following shall be reported immediately by telephone to the local health department in the county where the health professional is practicing or where the facility is located:

(a) A newly-recognized infectious agent;

(b) An outbreak;

(c) An emerging pathogen that may pose a danger to the health of the public;

(d) An epidemic; or

(e) A noninfectious chemical, biological, or radiological agent.

(3) A report of the following shall be considered priority and shall be reported to the local health department in the county where the health professional is practicing or where the facility is located within one (1) business day:

(a) Suspected *Staphylococcal* or other foodborne intoxication; or

(b) Salmonellosis or other foodborne or waterborne infection.

(4) The local health department shall:

(a) Investigate the outbreak or occurrence;

(b) Carry out public health protection measures to address the disease or condition involved; and

(c) Make medical and environmental recommendations to prevent future similar outbreaks or occurrences.

(5) The local health department may seek assistance from the Kentucky Department for Public Health.

Section 13. Laboratory Surveillance. (1) Medical or national reference laboratory results for the following shall be considered routine:

(a) Influenza virus isolates;

(b) PCR-positive test results for influenza virus; and

(c) DNA molecular assays for influenza virus.

(2) The report shall include specific laboratory information pertinent to the result.

(3) Upon request by the Kentucky Department for Public

Health, a health facility laboratory or a medical laboratory shall report the number of clinical isolates and information regarding the antimicrobial resistance patterns of the clinical isolates at intervals no less frequently than three (3) months for:

- (a) *Acinetobacter baumannii* complex;
- (b) *Enterobacter cloacae* complex;
- (c) *Enterococcus* species;
- (d) *Escherichia coli*;
- (e) *Klebsiella oxytoca*;
- (f) *Klebsiella pneumoniae*;
- (g) *Pseudomonas aeruginosa*;
- (h) *Staphylococcus aureus*; or
- (i) An organism specified in a request that includes a justification of its public health importance.

(4) A facility that reports antimicrobial resistance (AR) data to the National Healthcare Safety Network (NHSN) AUR (Antimicrobial Use & Resistance) module shall meet this reporting requirement through NHSN reporting.

Section 14. Healthcare-Associated Infection Surveillance. (1) A health facility in Kentucky that participates in Centers for Medicare and Medicaid Services (CMS) reporting programs shall authorize the CDC to allow the Kentucky Department for Public Health to access health care-associated infection data reported to NHSN.

(2) The Kentucky Department for Public Health shall preserve patient confidentiality and shall not disclose to the public any patient-level data obtained from any health care facility.

(3) The Kentucky Department for Public Health may issue reports to the public regarding healthcare-associated infections in aggregate data form that:

- (a) May identify individual health care facilities; and
- (b) Shall comply with methodology developed by the CDC and CMS for national reporting of health care-associated infections.

(4) The Kentucky Department for Public Health may evaluate healthcare-associated infection data for accuracy and completeness.

Section 15. Antimicrobial Use Reporting. (1) A short-term acute-care hospital in Kentucky that participates in the CMS reporting programs shall report data on facility-wide inpatient antimicrobial use to the Kentucky Department for Public Health, Healthcare-Associated Infection/Antibiotic Resistance (HAI/AR) Prevention Program, on a quarterly basis. Critical access hospitals shall be exempt.

(2) Reporting deadlines shall be consistent with the CMS reporting program submission deadlines of data to the NHSN.

(3) The HAI/AR Prevention Program shall provide the specifications for data submission.

(4) Hospitals shall include aggregated antimicrobial use and patient day data for all inpatient units (facility-wide inpatient) included in the NHSN Laboratory-identified (LabID) MRSA Bacteremia reporting.

(5) The antimicrobial use numerator shall be days of therapy (DOTs) as defined by the NHSN Antimicrobial Use and Resistance (AUR) Module, available at <https://www.cdc.gov/nhsn/pdfs/pscmmanual/11pscaurcurrent.pdf>.

(6) Total DOTs shall be submitted for each of the following antimicrobials:

- (a) Azithromycin;
- (b) Cefepime;
- (c) Ceftazidime;
- (d) Ceftriaxone;
- (e) Ciprofloxacin;
- (f) Clindamycin;
- (g) Daptomycin;
- (h) Ertapenem;
- (i) Imipenem;
- (j) Levofloxacin;
- (k) Linezolid;
- (l) Meropenem;
- (m) Moxifloxacin;
- (n) Piperacillin-tazobactam; and
- (o) Vancomycin.

(7) Total DOTs for the listed drugs shall include only administrations via the intravenous and digestive tract routes.

(8) The denominator for antimicrobial use reporting shall be patient days as defined by the NHSN LabID Module available at [https://www.cdc.gov/nhsn/pdfs/pscmmanual/12pscmdro\\_cdadcurrent.pdf](https://www.cdc.gov/nhsn/pdfs/pscmmanual/12pscmdro_cdadcurrent.pdf).

(9) A hospital that reports antimicrobial use data to the NHSN AUR Module shall meet this reporting requirement through NHSN reporting.

Section 16. Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS) Surveillance. (1) All case reports shall be submitted to the HIV/AIDS Surveillance Program of the Kentucky Department for Public Health, Division of Epidemiology and Health Planning, or its designee, within five (5) business days of diagnosis on one (1) of the following forms:

- (a) Adult HIV Confidential Case Report Form; or
  - (b) Pediatric HIV Confidential Case Report Form.
- (2) Health professionals and medical laboratories shall report:
- (a) A positive test result for HIV, including tests with negative or indeterminate results that are part of a diagnostic testing algorithm whose overall interpretation is positive, and results from:

1. Any HIV antibody test;
2. Any HIV antigen test;
3. Any HIV Ribonucleic acid (RNA) or Deoxyribonucleic acid (DNA) test;
4. CD4+ assay including absolute CD4+ cell counts and CD4+%;
5. HIV genetic sequencing; or
6. HIV culture; or

(b) A diagnosis of AIDS that meets the definition of AIDS established within the CDC guidelines.

(3) A negative HIV test, if available, shall be submitted with the report required by subsection (2) (a) or (b) of this section.

(4) Any request for data related to HIV infection or AIDS shall be made to the Department for Public Health, Division of Epidemiology and Health Planning.

(5) A case report for a person with an HIV infection without a diagnosis of AIDS, or HIV infection with a diagnosis of AIDS shall include:

- (a) The patient's full name;
- (b) The patient's complete address;
- (c) Date of birth using the format MMDDYYYY;
- (d) Gender;
- (e) Race;
- (f) Ethnicity;
- (g) Risk factors as identified by CDC;
- (h) County of residence;
- (i) Name of provider and facility submitting report including contact information;
- (j) Specimens collected;
- (k) Date and type of HIV test performed using the format MMDDYYYY;
- (l) Results of CD4+ cell counts and CD4+%;
- (m) Results of viral load testing;
- (n) Results of RNA, DNA, HIV culture, HIV antigen, and HIV antibody, if performed;
- (o) Results of TB testing, if available;
- (p) Any documented HIV negative test, if available;
- (q) History of PrEP or PEP treatment, if available;
- (r) Antiretroviral treatment, if available;
- (s) HIV status of the person's partner, spouse, or children, as applicable;
- (t) Current pregnancy status for females;
- (u) Opportunistic infections diagnosed; and
- (v) Date of onset of illness.

(6) A report of pregnancy and delivery for a female diagnosed with HIV disease shall include:

- (a) All HIV diagnostic testing and results associated with the determination of HIV status of the infant, including tests with negative or indeterminate results that are part of a diagnostic testing algorithm and if final result is negative; and
- (b) Any HIV treatment prescribed to an infant.



(7) A report of AIDS shall be made whether or not the patient has been previously reported as having an HIV infection.

(8) If the patient has not been previously reported as having an HIV infection, the AIDS report shall also serve as the report of HIV.

Section 17. Sexually Transmitted Disease (STD). (1) Notification of a probable diagnosis of an STD as specified in subsection (4) or (7) of this section shall be made.

(2) The report shall provide:

(a) Pregnancy status; and

(b) Clinical, epidemiologic, laboratory, and treatment information pertinent to the disease.

(3) Upon a laboratory test result that indicates infection with an agent associated with one (1) or more of the diseases or conditions specified in subsection (4) or (7) of this section, a medical laboratory shall report to the Kentucky Department for Public Health information required by Section 5(6)(c)(b) of this administrative regulation.

(4) Sexually Transmitted Diseases Requiring Priority Notification. A report of the following shall be considered priority and shall be made within one (1) business day:

(a) Each pregnant female who has tested positive for syphilis regardless of stage; or

(b) Syphilis - primary, secondary, or early latent.

(5) Upon receipt of a report for a disease or condition specified in subsection (4) of this section, a local health department shall:

(a) Investigate the report;

(b) Carry out public health protection measures to address the disease or condition; and

(c) Forward the report to the Kentucky Department for Public Health within one (1) business day.

(6) The local health department may seek assistance from the Kentucky Department for Public Health.

(7) Sexually Transmitted Diseases Requiring Routine Notification. A report of the following shall be considered routine and shall be made within five (5) business days:

(a) Chancroid;

(b) Chlamydia trachomatis infection;

(c) Gonorrhea;

(d) Granuloma inguinale;

(e) Lymphogranuloma venereum; or

(f) Syphilis, other than primary, secondary, early latent, or congenital.

(8) Upon receipt of a report for a disease or condition specified in subsection (7) of this section, a local health department shall:

(a) Make a record of the report using Form EPID 200, Kentucky Reportable Disease Form;

(b) Forward the report to the Kentucky Department for Public Health within five (5) business days; and

(c) Render assistance if requested by the reporting entity or the Kentucky Department for Public Health.

Section 18. Tuberculosis. (1) A pharmacist shall give notice if two (2) or more of the following medications used for the initial treatment of active tuberculosis are dispensed to an inpatient in a health facility or to an ambulatory patient in a health facility or a pharmacy:

(a) Ethambutol;

(b) Isoniazid;

(c) Pyrazinamide; and

(d) Rifampin or rifabutin.

(2)(a) A report of tuberculosis shall be considered priority and shall be reported to the local health department serving the county in which the patient resides.

(b) If the local health department cannot be reached, notification shall be given to the Kentucky Department for Public Health.

(3) The report shall include:

(a) Information required in Section 5(6)(c)(b) of this administrative regulation; and

(b) Names of the medications dispensed.

Section 19. Asbestosis, Coal Worker's Pneumoconiosis, and

Silicosis. (1) A health professional shall report a diagnosis of the following to the Kentucky Department for Public Health within three (3) months of diagnosis:

(a) Asbestosis;

(b) Coal worker's pneumoconiosis; or

(c) Silicosis.

(2) A report required under this section shall include the information required in Section 5(6)(c)(b).

Section 20. Reporting of Communicable Diseases in Animals.

(1) A diagnosis in an animal of a condition known to be communicable to humans, except for rabies, shall require routine notification.

(2) A veterinarian shall report the diagnosis within five (5) business days to the local health department serving the county in which the animal is located.

(3) If a laboratory test indicates infection of an animal with an agent associated with a condition known to be communicable to humans, the director of a medical laboratory shall report the result to the local health department serving the county in which the animal is located within five (5) business days.

(4) The local health department receiving the report shall:

(a) Investigate the report;

(b) Carry out public health protection measures for the control of communicable diseases; and

(c) Forward the report to the Kentucky Department for Public Health within five (5) business days.

(5) The local health department may seek assistance from the Kentucky Department for Public Health.

Section 21. Kentucky Public Health Advisory. (1) If the secretary of the Cabinet for Health and Family Services or the commissioner of the Department for Public Health determines that a disease not presently listed in this administrative regulation requires reporting, the secretary or commissioner shall issue a Kentucky public health advisory.

(2) The Kentucky public health advisory shall include:

(a) Date and time the advisory is issued;

(b) A unique number to identify the advisory;

(c) Names for the disease or condition;

(d) A description of the disease or condition;

(e) Recommendations for health professionals, health facilities, and laboratories; and

(f) Notification requirements including:

1. The notification time interval; and

2. Methods for notification.

(3) The duty to report by health professionals, health facilities, and laboratories pursuant to a Kentucky public health advisory shall begin upon receipt of the advisory and shall remain in effect until the advisory is rescinded by order of the secretary or the commissioner.

Section 22. Penalty. If the cabinet has cause to believe that a physician willfully neglects or refuses to notify the cabinet in accordance with this administrative regulation, pursuant to KRS 214.990(1) the cabinet shall make a referral to the appropriate professional licensing board.

Section 23. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "EPID 200, Kentucky Reportable Disease Form", 4/2020;

(b) "EPID 250, Kentucky Reportable MDRO Form", 10/2020;

(c) "EPID 394, Kentucky Reportable Disease Form, Hepatitis Infection in Pregnant Women or Child (aged five (5) years or less)", 9/2020;

(d) "EPID 399, Perinatal Hepatitis B Prevention Form for Infants", 6/2020;

(e) "Adult HIV Confidential Case Report Form", 11/2019; and

(f) "Pediatric HIV Confidential Case Report Form", 11/2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. and available online at

<https://chfs.ky.gov/agencies/dph/dehp/ldb/Pages/default.aspx>.

ERIC C. FRIEDLANDER, Secretary

STEVEN J. STACK, MD, MBA, Commissioner

APPROVED BY AGENCY: August 24, 2022

FILED WITH LRC: August 29, 2022 at 8:00 a.m.

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

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie Brooks and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes notification standards and specifies the diseases requiring immediate, urgent, priority, routine, or general notification, in order to facilitate rapid public health action to control diseases, and to permit an accurate assessment of the health status of the commonwealth.

(b) The necessity of this administrative regulation: KRS 211.180(1) requires the cabinet to implement and maintain a statewide program for the detection, prevention, and control of reportable diseases. KRS 214.010 requires every physician, advanced practice registered nurse, and every head of family to notify the local health department of the existence of diseases and conditions designated by administrative regulation of the cabinet.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation delineates which diseases are reportable including the urgency of the notification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will allow clinicians including every physician, advanced practice registered nurse, and head of family to notify the local health department of the existence of the diseases specified in the administrative regulation.

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

(a) How the amendment will change this existing administrative regulation: The amended after comments version of this administrative regulation revises the urgent reporting criteria for smallpox by deleting smallpox as a stand-alone reportable condition and adding Orthopox virus which includes monkeypox, smallpox, and vaccinia.

(b) The necessity of the amendment to this administrative regulation: The amended after comments version is necessary to ensure the local health departments and the Department for Public Health are aware of all cases of monkeypox in the state. The addition of vaccinia will ensure local health departments are prepared to track the spread of this disease should the need arise.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.180(1) requires the cabinet to implement and maintain a statewide program for the detection, prevention, and control of reportable diseases. KRS 214.010 requires every physician, advanced practice registered nurse, and every head of family to notify the local health department of the existence of diseases and conditions designated by administrative regulation of the cabinet.

(d) How the amendment will assist in the effective administration of the statutes: The amended after comments version of this administrative regulation provides local health departments and the Department for Public Health the information necessary to monitor the incidence of monkeypox and other Orthopox outbreaks throughout the state.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The entities affected by this administrative regulation include all health facilities as defined by KRS 216B.015(13), health professionals licensed under KRS Chapters 311 through 314, medical laboratories as defined by KRS 333.020(3), national reference laboratories contracted by Kentucky

health professionals, laboratories, or healthcare facilities, pharmacists licensed under KRS Chapter 315, and veterinarians licensed under KRS Chapter 321.

(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: Healthcare facilities will need to be aware of the change and will need to report findings of an Orthopox virus, including monkeypox and vaccinia.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs associated with compliance is unknown. Healthcare facilities and physicians already report communicable diseases.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, the benefits of the timely and appropriate prevention and control of communicable diseases will be afforded to all citizens of the commonwealth.

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

(a) Initially: This is an ongoing program, there are no initial costs.

(b) On a continuing basis: There is no increase in ongoing costs associated with the amended after comments version 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 reportable disease programs affected by the amended after comments version of this administrative regulation are funded through a mix of state general fund dollars, federal dollars, and specialized grants.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amended after comments administrative regulation does not contain fees.

(9) TIERING: Is tiering applied? Tiering is not applied. While the list of reportable diseases and conditions is separated by immediate, urgent, priority, routine, or general notification, all healthcare facilities and physicians are required to report any known communicable disease.

## 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 amended after comments administrative regulation impacts the Division of Epidemiology and Health Planning, as well as all local health departments.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050, 211.090(3), 211.180(1), and 214.010.

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

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

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

counties, fire departments, or school districts) for subsequent years? This amended after comments administrative regulation does not generate revenue.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(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 that will result from this amended after comments administrative regulation are unknown. By adding Orthopox virus to include the reporting of monkeypox and vaccinia the health care system will be able to monitor the progression of the virus and can provide adequate treatment in a timely manner. This may result in minor cost savings to the health care system overall.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The ongoing cost savings is unknown at this time.

(c) How much will it cost the regulated entities for the first year? There will be no costs to the regulated entities.

(d) How much will it cost the regulated entities for subsequent years? There will be no costs to the regulated entities.

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 result in cost savings for those health care facilities that elect to utilize the Kentucky Health Information Exchange for submission.

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 amended after comments administrative regulation will not have a major economic impact on the regulated entities or state or local governments.

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

**907 KAR 1:082. Coverage provisions and requirements regarding rural health clinic services.**

RELATES TO: KRS 205.510, 205.520, 205.622, 205.8451, 309.080, 309.0831, 309.130, 311.840, 314.011, 319.010, 319.050, 319.053, 319C.010, 335.080, 335.100, 335.300, 335.500, 369.101 to 369.120, 42 C.F.R. 400.203, 42 C.F.R. 405.2401(b), 405.2412-405.2417, 405.2450, 405.2452, 405.2468, 431.17, 438.2, 440.20, 42 C.F.R. 491.1-491.11, 45 C.F.R. Part 164, 20 U.S.C. 1400, 21 U.S.C. 823, 29 U.S.C. 701, 42 U.S.C. 1395x(aa) and (hh)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to

comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Medicaid program coverage provisions and requirements relating to rural health clinic services.

Section 1. Definitions. (1) "Adult peer support specialist" means an individual who meets the requirements for an adult peer support specialist established in 908 KAR 2:220.

(2) "Advanced practice registered nurse" is defined by KRS 314.011(7).

(3)[(2)] "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.

(4) "Approved behavioral health practitioner under supervision" means an individual under billing supervision of an approved behavioral health practitioner 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 or under contract with the same billing provider as the billing supervisor.

(5) "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.

(6) "Certified alcohol and drug counselor" is defined by KRS 309.080(4).

(7) "Certified social worker" means an individual who meets the requirements established in KRS 335.080.

(8)[(3)] "Community support associate" means a paraprofessional[an individual] who[:

(a)] meets the community support associate requirements established in 908 KAR 2:250[; and

(b) Has been certified by the Department for Behavioral Health, Intellectual and Developmental Disabilities as a community support associate].

(9) "Co-occurring disorder" means a mental health and substance use disorder.

(10)[(4)] "Department" means the Department for Medicaid Services or its designee.

(11)[(5)] "Enrollee" means a recipient who is enrolled with a managed care organization.

[(6) "Face-to-face" means occurring:

(a) in person; or

(b) Via a real-time, electronic communication that involves two (2)-way interactive video and audio communication.]

(12) "Family peer support specialist" means an individual who meets the requirements for a Kentucky family peer support specialist established in 908 KAR 2:230.

(13)[(7)] "Federal financial participation" is defined in 42 C.F.R. 400.203.

(14)(8) "Homebound recipient" is defined by 42 C.F.R. 440.20(b)(4)(iv).

(15) "In-person" means a healthcare encounter occurring:

(a) Via direct **consultation[contact]** and interaction between the individual and healthcare provider;

(b) At the same location; and

(c) Not via telehealth.

(16)(9) "Intermittent nursing care" is defined by 42 C.F.R. 405.2401(b).

(17)(40) "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).

(18)(44) "Licensed behavior analyst" is defined by KRS 319C.010(6).

(19) "Licensed clinical alcohol and drug counselor" is defined by KRS 309.080(7).

(20) "Licensed clinical alcohol and drug counselor associate" is defined by KRS 309.080(9).

(21)(42) "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.

(22)(43) "Licensed marriage and family therapist" is defined by KRS 335.300(2).

(23)(44) "Licensed professional art therapist" is defined by KRS 309.130(2).

(24)(45) "Licensed professional art therapist associate" is defined by KRS 309.130(3).

(25)(46) "Licensed professional clinical counselor" is defined by KRS 335.500(3).

(26)(47) "Licensed professional counselor associate" is defined by KRS 335.500(4)(3).

(27)(48) "Licensed psychological associate" means:

(a) An individual who:

1. Currently possesses a licensed psychological associate license in accordance with KRS 319.010(6); and

2. Meets the licensed psychological associate requirements established in 201 KAR Chapter 26; or

(b) A certified psychologist.

(28)(49) "Licensed psychological practitioner" means:

(a) An individual who meets the requirements established in KRS 319.053; or

(b) A certified psychologist with autonomous functioning.

(29)(20) "Licensed psychologist" means an individual who:

(a) Currently possesses a licensed psychologist license in accordance with KRS 319.010(6); and

(b) Meets the licensed psychologist requirements established in 201 KAR Chapter 26.

(30)(24) "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(31)(22) "Marriage and family therapy associate" is defined by KRS 335.300(3).

(32)(23) "Medically necessary" means that a covered benefit or service is necessary in accordance with 907 KAR 3:130.

(33) "Medication assisted treatment" means the treatment of a substance use disorder with approved medications in combination with counseling, behavior therapies, and other supports.

(34)(24) "Other ambulatory services" is defined by 42 C.F.R. 440.20(c).

(35)(25) "Part-time nursing care" is defined by 42 C.F.R. 405.2401(b).

(36)(26) "Physician" is defined by KRS 205.510(12)(44) and 42 C.F.R. 405.2401(b).

(37)(27) "Physician assistant" is defined by KRS 311.840(3) and 42 C.F.R. 405.2401(b).

(38)(28) "Recipient" is defined by KRS 205.8451(9).

(39) "Registered alcohol and drug peer support specialist" is defined by KRS 309.080(12).

(40) "Registered behavior technician" means an individual who meets the following requirements by the Behavior Analyst Certification Board:

(a) Be at least eighteen (18) years of age;

(b) Have a high school diploma or its equivalent; and

(c) Within six (6) months of hire for a new employee or within six (6) months of the effective date of this administrative regulation for an existing employee:

1. Complete a training program that is:

a. Approved by the Behavior Analyst Certification Board;

b. Based on the current edition of the RBT Task List endorsed by the Behavior Analyst Certification Board; and

c. Conducted by Behavior Analyst Certification Board certificants;

2. Pass the Registered Behavior Technician Competency Assessment administered by a Behavior Analyst Certification Board certificant; and

3. Pass the Registered Behavior Technician exam provided by an assistant assessor overseen by a Behavior Analyst Certification Board certificant.

(41)(29) "Rural health clinic" or "RHC" is defined by 42 C.F.R. 405.2401(b).

(42)(30) "State plan" is defined by 42 C.F.R. 400.203.

(43)(34) "Visiting nurse services" is defined by 42 C.F.R. 405.2401(b).

(44) "Withdrawal management" means a set of interventions aimed at managing acute intoxication and withdrawal based on the severity of the illness and co-occurring conditions identified through a comprehensive biopsychosocial assessment with linkage to addiction management services, and incorporated into a recipient's care as needed throughout the appropriate levels of care.

(45) "Youth peer support specialist" means an individual who meets the requirements established for a Kentucky youth peer support specialist established in 908 KAR 2:240.

Section 2. Covered Services Other Than Behavioral Health Services. The department shall cover the following medically necessary rural health clinic services furnished by a RHC that has been certified in accordance with 42 C.F.R. 491.1 through 491.11:

(1) Services pursuant to 42 U.S.C. 1395x(aa);

(2) Services provided by a physician if the physician:

(a) Complies with the physician responsibility requirements established by 42 C.F.R. 491.8(b); and

(b)1. Performs the services in a RHC; or

2. Is compensated under an agreement with a RHC for providing services furnished to a Medicaid eligible RHC patient in a location other than the RHC;

(3) Services provided by a physician assistant or advanced practice registered nurse who is employed by or receives compensation from the RHC if the services:

(a) Are furnished by a member of the RHC's staff who complies with the responsibility requirements established by 42 C.F.R. 491.8(c);

(b) Are furnished under the medical supervision of a physician except for services furnished by an APRN as these services shall not be required to be furnished under the medical supervision of a physician;

(c) Are furnished in accordance with a medical order for the care and treatment of a patient as prepared by a physician or an advanced practice registered nurse;

(d) Are within the provider's legally-authorized scope of practice; and

(e) Would be covered if furnished by a physician;

(4) Services or supplies furnished as incidental to services provided by a physician, physician assistant, or advanced practice registered nurse if the service or supply meets the criteria established in 42 C.F.R. 405.2413 or 42 C.F.R. 405.2415;

(5) Part-time or intermittent visiting nurse care and related supplies, except for drugs or biologicals, if:

(a) The RHC is located in an area where a determination has been made that there is a shortage of home health agencies pursuant to 42 C.F.R. 405.2417;

(b) The services are provided by a registered nurse or licensed practical nurse who is employed by or compensated for the services by the RHC; and

(c) The services are furnished to a homebound recipient under a written plan of treatment that is:

1. Established and reviewed at least every sixty (60) days by a supervising physician of the RHC; or
2. Established by a physician, physician assistant, or advanced practice registered nurse and reviewed and approved at least every sixty (60) days by a supervising physician of the RHC; or
- (6) Other ambulatory services as established in the state plan.

Section 3. Behavioral Health Services. (1) Except as specified in the requirements stated for a given service, the services covered may be provided for:

- (a) A mental health disorder;
- (b) A substance use disorder; or
- (c) Co-occurring mental health and substance use disorders.
- (2) The department shall cover, and a rural health clinic may provide, the following services:

(a) Behavioral health services provided by a licensed psychologist, licensed clinical social worker, or advanced practice registered nurse within the provider's legally authorized scope of service; or

(b) Services or supplies incidental to a licensed psychologist's or licensed clinical social worker's behavioral health services if the service or supply meets the criteria established in 42 C.F.R. 405.2452.

(3) In addition to the services referenced in subsection (2) of this section, the following behavioral health services provided by a rural health clinic shall be covered under this administrative regulation in accordance with the corresponding following requirements:

- (a) A screening provided by:
  1. A licensed psychologist;
  2. A licensed professional clinical counselor;
  3. A licensed clinical social worker;
  4. A licensed marriage and family therapist;
  5. A physician;
  6. A psychiatrist;
  7. An advanced practice registered nurse;
  8. A licensed psychological practitioner;
  9. A licensed psychological associate working under the supervision of a licensed psychologist;
  10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor;
  11. A certified social worker working under the supervision of a licensed clinical social worker;
  12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist;
  13. A physician assistant working under the supervision of a physician;
  14. A licensed professional art therapist; or
  15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist;
- (b) An assessment provided by:
  1. A licensed psychologist;
  2. A licensed professional clinical counselor;
  3. A licensed clinical social worker;
  4. A licensed marriage and family therapist;
  5. A physician;
  6. A psychiatrist;
  7. An advanced practice registered nurse;
  8. A licensed psychological practitioner;
  9. A licensed psychological associate working under the supervision of a licensed psychologist;
  10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor;
  11. A certified social worker working under the supervision of a licensed clinical social worker;
  12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist;
  13. A physician assistant working under the supervision of a physician;
  14. A licensed professional art therapist;
  15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist;
  16. A licensed behavior analyst; or

17. A licensed assistant behavior analyst working under the supervision of a licensed behavior analyst;
- (c) Psychological testing provided by:
  1. A licensed psychologist;
  2. A licensed psychological practitioner; or
  3. A licensed psychological associate working under the supervision of a licensed psychologist;
- (d) Crisis intervention provided by:
  1. A licensed psychologist;
  2. A licensed professional clinical counselor;
  3. A licensed clinical social worker;
  4. A licensed marriage and family therapist;
  5. A physician;
  6. A psychiatrist;
  7. An advanced practice registered nurse;
  8. A licensed psychological practitioner;
  9. A licensed psychological associate working under the supervision of a licensed psychologist;
  10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor;
  11. A certified social worker working under the supervision of a licensed clinical social worker;
  12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist;
  13. A physician assistant working under the supervision of a physician;
  14. A licensed professional art therapist; or
  15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist;
- (e) Service planning provided by:
  1. A licensed psychologist;
  2. A licensed professional clinical counselor;
  3. A licensed clinical social worker;
  4. A licensed marriage and family therapist;
  5. A physician;
  6. A psychiatrist;
  7. An advanced practice registered nurse;
  8. A licensed psychological practitioner;
  9. A licensed psychological associate working under the supervision of a licensed psychologist;
  10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor;
  11. A certified social worker working under the supervision of a licensed clinical social worker;
  12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist;
  13. A physician assistant working under the supervision of a physician;
  14. A licensed professional art therapist;
  15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist;
  16. A licensed behavior analyst; or
  17. A licensed assistant behavior analyst working under the supervision of a licensed behavior analyst;
- (f) Individual outpatient therapy provided by:
  1. A licensed psychologist;
  2. A licensed professional clinical counselor;
  3. A licensed clinical social worker;
  4. A licensed marriage and family therapist;
  5. A physician;
  6. A psychiatrist;
  7. An advanced practice registered nurse;
  8. A licensed psychological practitioner;
  9. A licensed psychological associate working under the supervision of a licensed psychologist;
  10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor;
  11. A certified social worker working under the supervision of a licensed clinical social worker;
  12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist;
  13. A physician assistant working under the supervision of a physician;



17. ~~A licensed assistant behavior analyst working under the supervision of a licensed behavior analyst; or~~  
 18. ~~A community support associate;~~  
 (m) ~~Intensive outpatient program provided by:~~  
 1. ~~A licensed psychologist;~~  
 2. ~~A licensed professional clinical counselor;~~  
 3. ~~A licensed clinical social worker;~~  
 4. ~~A licensed marriage and family therapist;~~  
 5. ~~A physician;~~  
 6. ~~A psychiatrist;~~  
 7. ~~An advanced practice registered nurse;~~  
 8. ~~A licensed psychological practitioner;~~  
 9. ~~A licensed psychological associate working under the supervision of a licensed psychologist;~~  
 10. ~~A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor;~~  
 11. ~~A certified social worker working under the supervision of a licensed clinical social worker;~~  
 12. ~~A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist;~~  
 13. ~~A physician assistant working under the supervision of a physician;~~  
 14. ~~A licensed professional art therapist; or~~  
 15. ~~A licensed professional art therapist associate; or~~  
 (n) ~~Therapeutic rehabilitation program services provided by:~~  
 1. ~~A licensed psychologist;~~  
 2. ~~A licensed professional clinical counselor;~~  
 3. ~~A licensed clinical social worker;~~  
 4. ~~A licensed marriage and family therapist;~~  
 5. ~~A physician;~~  
 6. ~~A psychiatrist;~~  
 7. ~~An advanced practice registered nurse;~~  
 8. ~~A licensed psychological practitioner;~~  
 9. ~~A licensed psychological associate working under the supervision of a licensed psychologist;~~  
 10. ~~A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor;~~  
 11. ~~A certified social worker working under the supervision of a licensed clinical social worker;~~  
 12. ~~A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist;~~  
 13. ~~A physician assistant working under the supervision of a physician;~~  
 14. ~~A licensed professional art therapist; or~~  
 15. ~~A licensed professional art therapist associate working under the supervision of a licensed professional art therapist.~~  
 (4)(a) A screening shall:  
 1. ~~Determine[Be the determination of] the likelihood that an individual has a mental health disorder, a substance use disorder, or co-occurring disorders;~~  
 2. ~~Not establish the presence or specific type of disorder;[and]~~  
 3. ~~Establish the need for an in-depth assessment;[and]~~  
 4. Be provided by:  
 a. An approved behavioral health practitioner; or  
 b. An approved behavioral health practitioner under supervision.  
 (b) An assessment shall:  
 1. Include gathering information and engaging in a process with the individual that enables the provider to:  
 a. Establish the presence or absence of a mental health disorder, substance use disorder, or co-occurring disorders;  
 b. Determine the individual's readiness for change;  
 c. Identify the individual's strengths or problem areas that may affect the treatment and recovery processes; and  
 d. Engage the individual in developing an appropriate treatment relationship;  
 2. Establish or rule out the existence of a clinical disorder or service need;  
 3. Include working with the individual to develop a treatment and service plan;[and]  
 4. Not include a psychological or psychiatric evaluation or assessment;  
 5. If being made for the treatment of a substance use disorder,

utilize a multidimensional assessment that complies with the most current edition of the ASAM Criteria to determine the most appropriate level of care; and  
 6. Be provided by:  
 a. An approved behavioral health practitioner; or  
 b. An approved behavioral health practitioner under supervision.  
 (c) Psychological testing shall[include]:  
 1. Include a psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities;[and]  
 2. Include an interpretation and a written report of testing results;  
 3. Be provided by a licensed:  
 a. Psychologist;  
 b. Psychological practitioner; or  
 c. Psychological associate working under the supervision of a licensed psychologist; and  
 4. Be in-person or via telehealth as appropriate pursuant to 907 KAR 3:170.  
 (d) Crisis intervention:  
 1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to:  
 a. The recipient; or  
 b. Another individual;  
 2. Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities for an individual with a behavioral health disorder;  
 3. Shall be provided:  
 a. On-site at a rural health clinic;  
 b. As an immediate relief to the presenting problem or threat; and  
 c. In a one-on-one[face-to-face, one-on-one] encounter between the provider and the recipient, which is delivered either in-person or via telehealth if appropriate pursuant to 907 KAR 3:170;  
 4. May include:  
 a. Verbal de-escalation, risk assessment, or cognitive therapy;  
 or  
 b. Further service planning including:  
 (i) Lethal means reduction for suicide; or  
 (ii) Substance use disorder or relapse prevention;[and]  
 5. Shall be followed by a referral to non-crisis services if applicable; and  
 6. Shall be provided by:  
 a. An approved behavioral health practitioner; or  
 b. An approved behavioral health practitioner under supervision.  
 (e)1. Service planning shall:  
 a. Be provided in-person or via telehealth as appropriate pursuant to the most current version of The ASAM Criteria and 907 KAR 3:170;  
 b. Involve[consist of] assisting a recipient in creating an individualized plan for services needed for maximum reduction of an intellectual disability and to restore the individual to his or her best possible functional level;  
 c. Involve restoring a recipient's functional level to the recipient's best possible functional level; and  
 d. Be performed using a person-centered planning process.  
 2. A service plan:  
 a. Shall be directed and signed by the recipient;  
 b. Shall include practitioners of the recipient's choosing; and  
 c. [b.] May include:  
 (i) A mental health advance directive being filed with a local hospital;  
 (ii) A crisis plan; or  
 (iii) A relapse prevention strategy or plan.  
 (f) Individual outpatient therapy shall:  
 1. Be provided to promote the:  
 a. Health and wellbeing of the individual; and[or]  
 b. Restoration of a recipient to the recipient's best possible functional level from a substance use disorder or a co-occurring disorder[Recovery from a substance use disorder, mental health

disorder, or co-occurring related disorders];

2. Consist of:

a. An in-person or via telehealth as appropriate pursuant to 907 KAR 3:170.[A face-to-face] one-on-one encounter between the provider and recipient; and

b. A behavioral health therapeutic intervention provided in accordance with the recipient's identified treatment plan;

3. Be aimed at:

a. Reducing adverse symptoms;

b. Reducing or eliminating the presenting problem of the recipient; and

c. Improving functionality;[and]

4. Not exceed three (3) hours per day; and

5. Be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(g)1. Family outpatient therapy shall consist of an in-person, or via telehealth as appropriate pursuant to 907 KAR 3:170.[a face-to-face] behavioral health therapeutic intervention provided:

a. Through scheduled therapeutic visits between the therapist and the recipient and at least one (1) member of the recipient's family; and

b. To address issues interfering with the relational functioning of the family and to improve interpersonal relationships within the recipient's home environment.

2. A family outpatient therapy session shall be billed as one (1) service regardless of the number of individuals, including multiple members from one (1) family, who participate in the session.

3. Family outpatient therapy shall:

a. Be provided to promote the:

(i) Health and wellbeing of the individual; or

(ii) Restoration of a recipient to their best possible functional level from a substance use disorder or co-occurring disorders; and

b. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary.

4. Family outpatient therapy shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(h)1. Group outpatient therapy shall:

a. Be a behavioral health therapeutic intervention provided in accordance with a recipient's identified plan of care;

b. Be provided to promote the:

(i) Health and wellbeing of the individual; and[or]

(ii) Restoration of a recipient to their best possible functional level from a substance use disorder or co-occurring disorder[Recovery from a substance use disorder, mental health disorder, or co-occurring related disorders];

c.[b.] Consist of an in-person, or via telehealth as appropriate pursuant to 907 KAR 3:170.[a face-to-face] behavioral health therapeutic intervention provided in accordance with the recipient's identified treatment plan;

d.[c.] Be provided to a recipient in a group setting:

(i) Of nonrelated individuals; and

(ii) Not to exceed twelve (12) individuals in size;

e. Focus on the psychological needs of the recipients as evidenced in each recipient's plan of care;

f.[d.] Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;

g.[e.] Not include physical exercise, a recreational activity, an educational activity, or a social activity; and

h.[f.] Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary.

2. A family outpatient therapy[The] group shall have a:

a. Deliberate focus; and

b. Defined course of treatment.

3. The subject of a group receiving group outpatient therapy shall be related to each recipient participating in the group.

4. The provider shall keep individual notes regarding each

recipient within the group and within each recipient's health record.

5. Family outpatient therapy shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(i)1. Collateral outpatient therapy shall:

a. Consist of an in-person or appropriate telehealth, provided pursuant to 907 KAR 3:170.[a face-to-face] behavioral health consultation:

(i) With a parent or caregiver of a recipient, household member of a recipient, legal representative of a recipient, school personnel, treating professional, or other person with custodial control or supervision of the recipient; and

(ii) That is provided in accordance with the recipient's treatment plan;[and]

b. Not be reimbursable if the therapy is for a recipient who is at least twenty-one (21) years of age; and

c. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary.

2. Written consent by a parent or custodial guardian[Consent] to discuss a recipient's treatment with any person other than a parent or legal guardian shall be signed and filed in the recipient's health record.

3. Collateral outpatient therapy shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(j)1. Screening, brief intervention, and referral to treatment for a substance use disorder shall:

a.[1-] Be an evidence-based early intervention approach for an individual with non-dependent substance use to provide an effective strategy for intervention prior to the need for more extensive or specialized treatment;[and]

b.[2-] Consist of:

(i)[a-] Using a standardized screening tool to assess an individual for risky substance use behavior;

(ii)[b-] Engaging a recipient who demonstrates risky substance use behavior in a short conversation and providing feedback and advice; and

(iii)[c-] Referring a recipient to additional substance use disorder or co-occurring disorder services if the recipient is determined to need[:

(i) Therapy; or

(ii) Other] additional services to address substance use if the recipient is determined to need other additional services;

c. Be provided in-person or via telehealth as appropriate according to 907 KAR 3:170;

d. Be provided by:

(i) An approved behavioral health practitioner; or

(ii) An approved behavioral health practitioner under supervision.

2. A screening and brief intervention that does not meet criteria for referral to treatment may be subject to coverage by the department.

(k)1. Day treatment shall be a nonresidential, intensive treatment program designed for a child under the age of twenty-one (21) years who has:

a. An emotional disability,[or] neurobiological disorder, or substance use disorder; and

b. A high risk of out-of-home placement due to a behavioral health issue.

2. Day treatment services shall:

a. Consist of an organized, behavioral health program of treatment and rehabilitative services (substance use disorder, mental health disorder, or co-occurring [mental health and substance use]-disorders);

b. Have unified policies and procedures that:

(i) Address the program philosophy, admission and discharge criteria, admission and discharge process, staff training, and integrated case planning; and

(ii) Have been approved by the recipient's local education authority and the day treatment provider;



c. Include:

(i) Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;

(ii) Behavior management and social skill training;

(iii) Independent living skills that correlate to the age and development stage of the recipient; or

(iv) Services designed to explore and link with community resources before discharge and to assist the recipient and family with transition to community services after discharge; and

d. Be provided:

(i) In collaboration with the education services of the local education authority including those provided through 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act) or 29 U.S.C. 701 et seq. (Section 504 of the Rehabilitation Act);

(ii) On school days and during scheduled breaks;

(iii) In coordination with the recipient's individualized education program~~[individualized educational plan]~~ if the recipient has an individualized education program~~[individualized educational plan]~~;

(iv) Under the supervision of a licensed or certified behavioral health practitioner or a behavioral health practitioner working under clinical supervision; and

(v) With a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider.

3. To provide day treatment services, ~~a[an]~~ RHC shall have:

a. The capacity to employ staff authorized to provide day treatment services in accordance with subparagraph 2. of this subsection [(3)(k) of this section] and to coordinate the provision of services among team members;

b. The capacity to provide the full range of services as stated in subparagraphs 1 and 2 of this paragraph;

c. Demonstrated experience in serving individuals with behavioral health disorders, mental health disorders, and co-occurring disorders;

d. The administrative capacity to ensure quality of services;

e. A financial management system that provides documentation of services and costs;

f. The capacity to document and maintain individual case records; and

g. Knowledge of substance use disorders.

4. Day treatment shall not include a therapeutic clinical service that is included in a child's individualized education program~~[plan]~~.

(l)1. Comprehensive community support services shall:

a. Be activities necessary to allow an individual to live with maximum independence in community-integrated housing;

b. Be intended to ensure successful community living through the utilization of skills training, cueing, or supervision as identified in the recipient's treatment plan;

c. Include:

(i) Reminding a recipient to take medications and monitoring symptoms and side effects of medications; or

(ii) Teaching parenting skills, teaching community resource access and utilization, teaching emotional regulation skills, teaching crisis coping skills, teaching how to shop, teaching about transportation, teaching financial management, or developing and enhancing interpersonal skills; and

d. Meet the requirements for comprehensive community support services established in 908 KAR 2:250.

2. To provide comprehensive community support services, a[an] RHC shall have:

a. The capacity to employ staff authorized to provide comprehensive community support services in accordance with subsection (3)(l) of this section and to coordinate the provision of services among team members;

b. The capacity to provide the full range of comprehensive community support services as stated in subparagraph 1 of this paragraph;

c. Demonstrated experience in serving individuals with behavioral health disorders;

d. The administrative capacity to ensure quality of services;

e. A financial management system that provides documentation of services and costs; and

f. The capacity to document and maintain individual case

records.

3. Comprehensive community support services shall be provided by:

a. An approved behavioral health practitioner, except for a licensed clinical alcohol and drug counselor; or

b. An approved behavioral health practitioner under supervision, except for a:

(i) Certified alcohol and drug counselor; or

(ii) Licensed clinical alcohol and drug counselor associate.

4. Support services for comprehensive community support services conducted by a behavioral health multi-specialty group or a behavioral health provider group by an individual working under the supervision of an approved behavioral health practitioner may be provided by a:

a. Community support associate; or

b. Registered behavioral technician under the supervision of a licensed behavioral analyst.

(m)1. Intensive outpatient program services shall:

a. Be an alternative to or transition from inpatient hospitalization or partial hospitalization for a mental health disorder, substance use disorder, or co-occurring disorders;

b. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is significantly more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;

c. Meet the service criteria, including the components for support systems, staffing, and therapies outlined in the most current version of The ASAM Criteria for intensive outpatient level of care services;

d. Be provided at least three (3) hours per day at least three (3) days per week;

e. Be provided at least six (6) hours per week for adolescents; and

f.~~[d.]~~ Include:

(i) Individual outpatient therapy, group outpatient therapy, or family outpatient therapy unless contraindicated;

(ii) Crisis intervention; or

(iii) Psycho-education related to identified goals in the recipient's treatment plan.

2. During psycho-education, the recipient or family member shall be:

a. Provided with knowledge regarding the recipient's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and

b. Taught how to cope with the recipient's diagnosis or condition in a successful manner.

3. An intensive outpatient program treatment plan shall:

a. Be individualized; and

b. Focus on stabilization and transition to a lesser level of care.

4. To provide intensive outpatient program services, a[an] RHC shall have:

a. Access to a board-certified or board-eligible psychiatrist for consultation;

b. Access to a psychiatrist, other physician, physician's assistant, or advanced practiced registered nurse for medication prescribing and monitoring;

c. Adequate staffing to ensure a minimum recipient-to-staff ratio of ten (10) to one (1);

d. The capacity to provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles;

e. The capacity to employ staff authorized to provide intensive outpatient program services in accordance with subparagraph 4.[subsection (3)(m)] of this paragraph~~[section]~~ and to coordinate the provision of services among team members;

f. The capacity to provide the full range of intensive outpatient program services as stated in this paragraph;

g. Demonstrated experience in serving individuals with behavioral health disorders;

h. The administrative capacity to ensure quality of services;

i. A financial management system that provides documentation of services and costs; and

j. The capacity to document and maintain individual case

records.

5. Intensive outpatient program services shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(n)1. Therapeutic rehabilitation program services shall:

a. Occur at the provider's site or in the community;

b. Be provided to an adult with a severe and persistent mental illness or to a child (under the age of twenty-one (21) years) who has a serious emotional disability;

c. Be designed to maximize the reduction of an intellectual disability and the restoration of the individual's functional level to the individual's best possible functional level; and

d. Not be a residential program.

2. A recipient in a therapeutic rehabilitation program shall establish the recipient's own rehabilitation goals within the person-centered service plan.

3. A therapeutic rehabilitation program shall:

a. Be delivered using a variety of psychiatric rehabilitation techniques;

b. Focus on:

(i) Improving daily living skills;

(ii) Self-monitoring of symptoms and side effects;

(iii) Emotional regulation skills;

(iv) Crisis coping skill; and

(v) Interpersonal skills; ~~and~~

c. Be delivered individually or in a group; and

d. Include:

(i) An individualized plan of care identifying measurable goals and objectives including discharge and relapse prevention planning;

(ii) Coordination of services the individual may be receiving; and

(iii) Referral to other necessary service supports as needed.

4. To provide therapeutic rehabilitation program services, ~~a[an]~~ RHC shall:

a. Have the capacity to employ staff authorized to provide therapeutic rehabilitation program services in accordance with subsection (3)(n) of this section and to coordinate the provision of services among team members;

b. Have the capacity to provide the full range of therapeutic rehabilitation program services as stated in this paragraph;

c. Have demonstrated experience in serving individuals with mental health disorders;

d. Have the administrative capacity to ensure quality of services;

e. Have a financial management system that provides documentation of services and costs; and

f. Have the capacity to document and maintain individual case records.

5. Program staffing for a therapeutic rehabilitation program shall include:

a. Licensed clinical supervision, consultation, and support to direct care staff; and

b. Direct care staff to provide scheduled therapeutic activities, training, and support.

6. Therapeutic rehabilitation services shall be provided by:

a. An approved behavioral health practitioner, except for a licensed clinical alcohol and drug counselor; or

b. An approved behavioral health practitioner under supervision, except for a:

(i) Certified alcohol and drug counselor; or

(ii) Licensed clinical alcohol and drug counselor associate.

7. If not provided by an allowed practitioner pursuant to clause 6. of this subparagraph, support services for therapeutic rehabilitation services shall be conducted by a provider:

a. Working under the supervision of an approved behavioral health practitioner; and

b. Who is:

(i) An adult peer support specialist;

(ii) A family peer support specialist; or

(iii) A youth peer support specialist.

(o)1. Peer support services shall:

a. Be emotional support that is provided by:

(i) An individual who has been trained and certified in accordance with 908 KAR 2:220 and who is experiencing or has experienced a substance use disorder to a recipient by sharing a similar substance use disorder in order to bring about a desired social or personal change;

(ii) A parent or other family member, who has been trained and certified in accordance with 908 KAR 2:230, of a child having or who has had a substance use disorder to a parent or family member of a child sharing a similar substance use disorder in order to bring about a desired social or personal change;

(iii) An individual who has been trained and certified in accordance with 908 KAR 2:240 and identified as experiencing a substance use disorder; or

(iv) A registered alcohol and drug peer support specialist who has been trained and certified in accordance with KRS 309.0831 and is a self-identified consumer of substance use disorder services who provides emotional support to others with substance use disorder to achieve a desired social or personal change;

b. Be an evidence-based practice;

c. Be structured and scheduled non-clinical therapeutic activities with an individual recipient or a group of recipients;

d. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient;

e. Except for the engagement into substance use disorder treatment through an emergency department bridge clinic, be coordinated within the context of a comprehensive, individualized plan of care developed through a person-centered planning process;

f. Be identified in each recipient's plan of care; and

g. Be designed to contribute directly to the recipient's individualized goals as specified in the recipient's plan of care.

2. To provide peer support services, a chemical dependency treatment center shall:

a. Have demonstrated:

(i) The capacity to provide peer support services for the behavioral health population being served including the age range of the population being served; and

(ii) Experience in serving individuals with behavioral health disorders;

b. Employ peer support specialists who are qualified to provide peer support services in accordance with 908 KAR 2:220, 908 KAR 2:230, 908 KAR 2:240, or KRS 309.0831;

c. Use an approved behavioral health practitioner to supervise peer support specialists;

d. Have the capacity to coordinate the provision of services among team members;

e. Have the capacity to provide ongoing continuing education and technical assistance to peer support specialists;

f. Require individuals providing peer support services to recipients to provide no more than thirty (30) hours per week of direct recipient contact; and

g. Require peer support services provided to recipients in a group setting to not exceed eight (8) individuals within any group at one (1) time.

(p)1. Partial hospitalization services shall be:

a. Short-term with an average of four (4) to six (6) weeks.

b. Less than twenty-four (24) hours each day;

c. An intensive treatment program for an individual who is experiencing significant impairment to daily functioning due to a substance use disorder or co-occurring disorders; and

d. Provided in-person or via telehealth as appropriate pursuant to the most recent version of The ASAM Criteria and 907 KAR 3:170.

2. Partial hospitalization may be provided to an adult or a minor.

3. Admission criteria for partial hospitalization shall be based on an inability of community-based therapies or intensive outpatient services to adequately treat the recipient.

4. A partial hospitalization program shall meet the service criteria, including the components for support systems, staffing, and therapies outlined in the most current version of The ASAM

Criteria for partial hospitalization level of care services.

5. A partial hospitalization program shall consist of:

- a. Individual outpatient therapy;
- b. Group outpatient therapy;
- c. Family outpatient therapy; or
- d. Medication management.

6. The department shall not reimburse for educational, vocational, or job training services provided as part of partial hospitalization.

7.a. A rural health clinic's partial hospitalization program shall have an agreement with the local educational authority to come into the program to provide all educational components and instruction that are not Medicaid billable or reimbursable.

b. Services in a Medicaid eligible child's individualized education program shall be coverable under Medicaid.

8. Partial hospitalization shall be:

- a. Provided for at least four (4) hours per day; and
- b. Focused on one (1) primary presenting problem.

9. A partial hospitalization program operated by a rural health clinic shall:

a. Include the following personnel for the purpose of providing medical care:

- (i) An advanced practice registered nurse, a physician assistant, or a physician available on site; and
- (ii) A board-certified or board-eligible psychiatrist available for consultation; and

b. Have the capacity to:

(i) Provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles;

(ii) Employ required practitioners and coordinate service provision among rendering practitioners; and

(iii) Provide the full range of services included in the scope of partial hospitalization established in this paragraph.

(g)1. Withdrawal management services provided by a rural health clinic shall:

a. Be provided in-person or via telehealth as consistent with 907 KAR 3:170 for recipients with a substance use disorder or co-occurring disorder and incorporated into a recipient's care along the continuum of care as needed;

b. Meet service criteria in accordance with the most current version of the ASAM Criteria for withdrawal management levels in an outpatient setting; and

c. If provided in an outpatient setting, comply with 908 KAR 1:374, Section 2.

2. A recipient who is receiving withdrawal management services shall meet the most current edition of diagnostic criteria for substance withdrawal management as established by the most recent version of the Diagnostic and Statistical Manual of Mental Disorders.

3. Withdrawal management services in an outpatient setting shall be provided by:

- a. A physician;
- b. A psychiatrist;
- c. A physician assistant;
- d. An advanced practice registered nurse; or

e. An approved behavioral health practitioner or behavioral health practitioner under supervision with oversight by a physician, advanced practice registered nurse, or physician assistant.

(r)1. Medication assisted treatment services shall be provided by an authorized prescribing provider who:

a. Is:

- (i) A physician;
- (ii) An advanced practice registered nurse;
- (iii) A physician assistant; or
- (iv) A psychiatrist;

b. Meets standards established pursuant to 201 KAR 9:270 or 201 KAR 20:065;

c. Maintains a current waiver under 21 U.S.C. 823(g)(2) to prescribe buprenorphine products including any waiving or expansion of buprenorphine prescribing authority by the federal government; and

d. Has experience and knowledge in addiction medicine.

2. Medication assisted treatment supporting behavioral health services shall:

a. Be co-located within the same practicing site as the practitioner who maintains a current waiver under 21 U.S.C. 823(g)(2) to prescribe buprenorphine products or via telehealth as appropriate pursuant to 907 KAR 3:170; or

b. Have agreements in place for linkage to appropriate behavioral health treatment providers who specialize in substance use disorders and are knowledgeable in biopsychosocial dimensions of alcohol and other substance use disorders, such as:

- (i) A licensed behavioral health services organization;
- (ii) A multi-specialty group;
- (iii) A provider group; or
- (iv) An individual behavioral health practitioner.

3. Medication assisted treatment may be provided in a provider group or multi-specialty group operating in accordance with 908 KAR 1:374, Section 7.

4. A medication assisted treatment program shall:

a. Assess the need for treatment including:

(i) A full patient history to determine the severity of the patient's substance use disorder; and

(ii) Identifying and addressing any underlying or co-occurring diseases or conditions, as necessary;

b. Educate the patient about how the medication works, including:

- (i) The associated risks and benefits; and
- (ii) Overdose prevention;

c. Evaluate the need for medically managed withdrawal from substances;

d. Refer patients for higher levels of care if necessary; and

e. Obtain informed consent prior to integrating pharmacologic or nonpharmacologic therapies.

(s)1. Applied behavior analysis services shall produce socially significant improvement in human behavior via the:

a. Design, implementation, and evaluation of environmental modifications;

b. Use of behavioral stimuli and consequences; or

c. Use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.

2. Applied behavior analysis shall be based on scientific research and the direct observation and measurement of behavior and environment, which utilize contextual factors, establishing operations, antecedent stimuli, positive reinforcement, and other consequences to assist recipients in:

- a. Developing new behaviors;
- b. Increasing or decreasing existing behaviors; and
- c. Eliciting behaviors under specific environmental conditions.

3. Applied behavior analysis services may include principles, methods, and procedures of the experimental analysis of behavior and applied behavior analysis, including applications of those principles, methods, and procedures to:

a. Design, implement, evaluate, and modify treatment programs to change the behavior of individuals;

b. Design, implement, evaluate, and modify treatment programs to change the behavior of individuals that interact with a recipient;

c. Design, implement, evaluate, and modify treatment programs to change the behavior of a group or groups that interact with a recipient; or

d. Consult with individuals and organizations.

4.a. Applied behavior analysis services shall be provided by:

- (i) A licensed behavior analyst;
- (ii) A licensed assistant behavior analyst;
- (iii) An approved behavioral health practitioner with documented training in applied behavior analysis; or

(iv) An approved behavioral health practitioner under supervision with documented training in applied behavior analysis.

b. A registered behavior technician under the supervision of an appropriate practitioner pursuant to clause a. of this subparagraph may provide support services under this paragraph.

(4)(a) Laboratory services shall be reimbursable in accordance with 907 KAR 1:028 if provided by a RHC if:

1. The RHC has the appropriate Clinical Laboratory

Improvement Amendments (CLIA) certificate to perform laboratory testing pursuant to 907 KAR 1:028; and

2. The services are prescribed by a physician, advanced practice registered nurse, or physician assistant who has a contractual relationship with the RHC.

(b) Laboratory services may be administered, as appropriate, by:

1. An approved behavioral health practitioner; or

2. An approved behavioral health practitioner under supervision.

(5)(a) The requirements established in 908 KAR 1:370 shall apply to any provider of a service to a recipient for a substance use disorder or co-occurring mental health and substance use disorders.

(b) The detoxification program requirements established in 908 KAR 1:370 shall apply to a provider of a detoxification service.

(6) The extent and type of assessment performed shall depend upon the problem of the individual seeking or being referred for services.

(7) A diagnosis or clinical impression shall be made using terminology established in the most current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders.

(8)(a) Direct consultation[contact] between a provider or practitioner and a recipient shall be required for each service except for a collateral service for a child under the age of twenty-one (21) years if the collateral service is in the child's plan of care.

(b) A service that does not meet the requirement in paragraph (a) of this subsection shall not be covered.

(9) A billable unit of service shall be actual time spent delivering a service in an[a-face-to-face] encounter.

(10) A service shall be:

(a) Stated in the recipient's treatment plan;

(b) Provided in accordance with the recipient's treatment plan;

(c) Provided on a regularly scheduled basis except for a screening or assessment; and

(d) Made available on a nonscheduled basis if necessary during a crisis or time of increased stress for the recipient.

(11) The following services or activities shall not be covered under this administrative regulation:

(a) A behavioral health service provided to:

1. A resident of:

a. A nursing facility; or

b. An intermediate care facility for individuals with an intellectual disability;

2. An inmate of a federal, local, or state:

a. Jail;

b. Detention center; or

c. Prison; or

3. An individual with an intellectual disability without documentation of an additional psychiatric diagnosis;

(b) Psychiatric or psychological testing for another agency, including a court or school, that does not result in the individual receiving psychiatric intervention or behavioral health therapy from the independent provider;

(c) A consultation or educational service provided to a recipient or to others;

(d) Collateral outpatient therapy for an individual aged twenty-one (21) years or older;

(e) A telephone call, an email, a text message, or other electronic contact that does not meet the requirements stated in the definition of telehealth established pursuant to KRS 205.510(16) and implemented pursuant to 907 KAR 3:170[face-to-face];

(f) Travel time;

(g) A field trip;

(h) A recreational activity;

(i) A social activity; or

(j) A physical exercise activity group.

(12) A third party contract shall not be covered under this administrative regulation.

Section 4. Provision of Services. A[An] RHC shall comply with

the service provision requirements established by 42 C.F.R. 491.9.

Section 5. Immunizations. A[An] RHC shall provide, upon request from a recipient, the following covered immunizations:

(1) Diphtheria and tetanus toxoids and pertussis vaccine (DPT);

(2) Measles, mumps, and rubella virus vaccine live (MMR);

(3) Poliovirus vaccine, live, oral (any type(s)) (OPV); ~~[or]~~

(4) Hemophilus B conjugate vaccine (HBCV);

(5) Hepatitis A;

(6) Meningococcal vaccines; ~~[or]~~

(7) Meningococcal ACWY vaccine (MenACWY); or

(8) Any other vaccine that is recommended by the Advisory Committee on Immunization Practice (ACIP) vaccines.

Section 6. Medical Necessity Requirement. To be covered pursuant to this administrative regulation, a service shall be:

(1) Medically necessary for the recipient; and

(2) Provided to a recipient.

Section 7. Noncovered Services. (1) The following services shall not be covered as rural health clinic services:

(a) Services provided in a hospital as defined in 42 U.S.C. 1395x(e);

(b) Institutional services;

(c) Housekeeping, babysitting, or other similar homemaker services;

(d) Services which are not provided in accordance with restrictions imposed by law or administrative regulation.

(2) A third party contract shall not be covered under this administrative regulation.

Section 8. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.

(2) For example, if a recipient is receiving a service from an independent behavioral health service provider, the department shall not reimburse for the same service provided to the same recipient during the same time period by a rural health clinic.

Section 9. Protection, Security, and Records Maintenance Requirements for All Services. (1)(a) A provider shall maintain a current health record for each recipient.

(b)1. A health record shall document each service provided to the recipient including the date of ~~[the]~~service and ~~[the]~~signature of the individual who provided the service.

2. The individual who provided the service shall date and sign the health record within seventy-two (72) hours of[on] the date that the individual provided the service.

(2)(a) Except as established in paragraph (b) of this subsection, a provider shall maintain a health record regarding a recipient for at least five (5) years from the date of the service or until any audit dispute or issue is resolved beyond five (5) years.

(b) 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) of this subsection, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(3)(a) A provider shall comply with 45 C.F.R. Part 164.

(b) All information contained in a health record shall:

1. Be treated as confidential;

2. Not be disclosed to an unauthorized individual; and

3. If requested, be disclosed to an authorized representative of:

a. The department; or

b. Federal government.

(c)1. Upon request, a provider shall provide to an authorized representative of the department or federal government information requested to substantiate:

a. Staff notes detailing a service that was rendered;

b. The professional who rendered a service; and

c. The type of service rendered and any other requested

information necessary to determine, on an individual basis, whether the service is reimbursable by the department.

2. Failure to provide information referenced in subparagraph 1. of this paragraph shall result in denial of payment for any service associated with the requested information.

Section 10. Documentation and Records Maintenance Requirements for Behavioral Health Services. (1) The requirements in this section shall apply to health records associated with behavioral health services.

(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 or Medicaid 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 regarding:

(i) Where the individual is receiving treatment for the physical health diagnosis; and

(ii) 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;
- b. Assessment;
- c. Disposition; and

d. Six (6) month review of a recipient's treatment plan each time a six (6) month review occurs;

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; and

(b) Be:

- 1. Maintained in an organized central file;
- 2. Furnished to the Cabinet for Health and Family Services upon request;

3. Made available for inspection and copying by Cabinet for Health and Family Services' personnel;

4. Readily accessible; and

5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient.

(3) 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.

(4)(a) A provider's notes regarding a recipient shall:

1. Be made within seventy-two (72)~~forty-eight (48)~~ hours of the reconciliation of the record 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 treatment plan if changes are made; and
- d. Need for continued treatment if continued treatment is needed.

(b)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.

(c)1. Notes recorded by a practitioner working under supervision shall be co-signed and dated by the supervising professional providing the service.

2. If services are provided by a practitioner working under supervision, there shall be a monthly supervisory note recorded by the supervising professional reflecting consultations with the practitioner working under supervision concerning the:

a. Case; and

b. Supervising professional's evaluation of the services being provided to the recipient.

(5) Immediately following a screening of a recipient, the provider shall perform a disposition related to:

(a) An appropriate diagnosis;

(b) A referral for further consultation and disposition, if applicable; and

(c)1. Termination of services and referral to an outside source for further services; or

2. Termination of services without a referral to further services.

(6)(a) A recipient's treatment plan shall be reviewed at least once every six (6) months.

(b) Any change to a recipient's treatment plan shall be documented, signed, and dated by the rendering provider.

(7)(a) Notes regarding services to a recipient shall:

1. Be organized in chronological order;

2. Dated;

3. 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.

(8)(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 treatment plan;

b. Final diagnosis of clinical impression; and

c. Individual's condition upon termination and disposition.

(b) A health record relating to an individual who terminated from receiving services shall be fully completed within ten (10) days following termination.

(9) 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.

(10) If a recipient is transferred or referred to a health care facility or other provider for care or treatment, the transferring provider shall, if the recipient gives the provider written consent to do so, forward a copy or summary of the recipient's health record to the health care facility or other provider who is receiving the recipient.

(11)(a) If a provider'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 the provider, the health records of the provider shall:

1. Remain the property of the provider; and

2. Be subject to the retention requirements established in Section 9(2) of this administrative regulation.

(b) A provider shall have a written plan addressing how to maintain health records in the event of the provider's death.

Section 11. Medicaid Program Participation Requirements.

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(1)(a) A participating RHC shall be currently:

1. Enrolled in the Kentucky Medicaid program in accordance with 907 KAR 1:672; and

2. Except as established in paragraph (b) of this subsection, participating in the Kentucky Medicaid program in accordance with 907 KAR 1:671.

(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.

(2)(a) To be initially enrolled with the department, a[an] RHC shall:

1. Enroll in accordance with 907 KAR 1:672; and

2. Submit proof of its certification by the United States Department of Health and Human Services, Health Resources and Services Administration as a[an] RHC.

(b) To remain enrolled and participating in the Kentucky Medicaid program, a[an] RHC shall:

1. Comply with the enrollment requirements established in 907 KAR 1:672;

2. Comply with the participation requirements established in 907 KAR 1:671; and

3. Annually submit proof of its certification by the United States Department of Health and Human Services, Health Resources and Services Administration as a[an] RHC to the department.

(3) A[An] RHC that has been terminated from federal participation shall be terminated from Kentucky Medicaid program participation.

(4) A participating RHC and its staff shall comply with all applicable federal laws and regulations, state laws and administrative regulations, and local laws and regulations regarding the administration and operation of a[an] RHC.

(5)(a) If a[an] RHC receives any duplicate payment or overpayment from the department, regardless of reason, the provider shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

Section 12. Third Party Liability. A provider shall comply with KRS 205.622.

Section 13. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the provider's employees, officers, agents, or contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature.

Section 14. Auditing Authority. The department shall have the authority to audit any claim, medical record, or documentation associated with any claim or medical record.

Section 15. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to

this administrative regulation shall be contingent upon:

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

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

Section 16. Appeals. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 6, 2022

FILED WITH LRC: September 12, 2022 at 12:50 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 Persons: Jonathan Scott

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the coverage provisions and requirements regarding Medicaid program rural health clinic (RHC) services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the coverage provisions and requirements regarding Medicaid program RHC services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the coverage provisions and requirements regarding Medicaid program RHC 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 establishing the coverage provisions and requirements regarding Medicaid program RHC services.

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

(a) How the amendment will change this existing administrative regulation: The amendments to the regulation define new terms "adult peer support specialist", "approved behavioral health practitioner", "approved behavioral health practitioner under supervision", "ASAM Criteria", "certified alcohol and drug counselor", "co-occurring disorder", "family peer support specialist", "in-person", "licensed clinical alcohol and drug counselor", "licensed clinical alcohol and drug counselor associate", "medication assisted treatment", "registered alcohol and drug peer support specialist", "registered behavior technician", "withdrawal management", and "youth peer support specialist". The regulation is further amended to combine the service description with the providers who can perform the service. This is consistent with recent changes made to the service descriptions in 907 KAR Chapter 15. The regulation is also amended to require compliance with the appropriate level of care of the ASAM Criteria when treating substance use disorder for several types of services. The regulation is also amended to allow for telehealth in several additional services, if the telehealth service is appropriate pursuant to 907 KAR 3:170. Services such as comprehensive community support services and therapeutic rehabilitation programs are expanded. New services of peer support, partial hospitalization, withdrawal management, medication assisted treatment, and applied behavior analysis are introduced and are now reimbursable when performed within rural health clinics. In addition, laboratory services are now allowed to be reimbursable if the RHC has the appropriate certificate. Finally, the documentation requirement for

providers is being increased to within 72 hours of the date that the individual provided the service instead of on the same day that the service was provided.

The Amended After Comments version of the administrative regulation modifies the concept of “direct contact” to require “direct consultation”. In addition, all Advisory Committee on Immunization Practice (ACIP) vaccines can now be requested by recipients.

(b) The necessity of the amendment to this administrative regulation: The amendments serve to synchronize and expand behavioral health services that can be provided by RHCs consistent with recent changes to 907 KAR Chapter 15.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by implementing recent changes and service expansions to an additional population of behavioral health practitioners.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by complying with an approved Section 1115 waiver to implement the ASAM Criteria as well as implementing recent changes and service expansions for an additional population of behavioral health practitioners.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 295 rural health clinics will be affected by this amendment. Additionally, certain behavioral health professionals and practitioners will be impacted by this amendment. Finally, Medicaid recipients who qualify for substance use disorder services or the enhanced scope of behavioral health services will be affected by this amendment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. The expanded services are voluntary so no new actions are required. To provide the additional and enhanced behavioral health services permitted in this administrative regulation, some new provider types or licensure and certification requirements may be needed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is anticipated as expanding the scope of services is voluntary.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). RHCs will benefit by being authorized to provide more services. The expanded types of behavioral health practitioners/professionals will benefit by having more employment opportunities in which to provide services. Medicaid recipients will benefit by having enhanced access to behavioral health services including substance use disorder services.

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

(a) Initially: DMS does not anticipate additional costs in implementing this administrative regulation on an initial basis.

(b) On a continuing basis: On a continuing basis, DMS does not anticipate additional costs in implementing 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 federal and 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.

(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. Section 1302(b)(1)(E) of the Affordable Care Act 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 ON STATE OR LOCAL GOVERNMENT

(1) What 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 as will any RHC owned by a local government agency.

(2) Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 205.520(3), Section 1302(b)(1)(E) of the Affordable Care Act.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS does not anticipate that this administrative regulation will generate revenue for the state or local government in the first year of implementation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS does not anticipate that this administrative regulation will generate revenue for the state or local government in subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? DMS does not anticipate that this administrative regulation will generate costs in the first year of implementation.

(d) How much will it cost to administer this program for subsequent years? DMS does not anticipate that this administrative regulation will generate costs in subsequent years of implementation.

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. DMS does anticipate that this amendment will result in additional practice opportunities for certain behavioral health providers.

**CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Community Based Services  
Division of Protection and Permanency  
(Amended After Comments)**

**922 KAR 1:290. Background checks for private child-caring or child-placing staff members.**

RELATES TO: KRS 17.165, 17.500-17.580, 199.011, 199.642, Chapters 209, 506, 511, 515, 520, 525, 527, 529, 530, 336.220, 620.050-620.120, 34 U.S.C. 20921, 45 C.F.R. 98.43

STATUTORY AUTHORITY: KRS 194A.050(1), 199.640(5)(a), 199.642(8), 42 U.S.C. 671(a)(20)(D)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law, qualify for the receipt of federal funds, and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.640(5)(a) requires the secretary to promulgate administrative regulations establishing basic standards of care and service for child-caring facilities and child-placing agencies relating to the health and safety of all children in the care of the facility or agency, the basic components for a quality program, and any other factors as may be necessary to promote the welfare of children cared for or placed by the agencies and facilities. KRS 199.642(8) requires the cabinet to promulgate an administrative regulation necessary to implement child-caring or child-placing staff member background checks in accordance with 42 U.S.C. 671(a)(20)(D). This administrative regulation establishes background check requirements for child-caring and child-placing staff members, reporting requirements, and appeals.

Section 1. Definitions. (1) "Address check" means a cabinet search of the Kentucky or National Sex Offender Registry to

determine if a person's residence is a known address of a registered sex offender.

(2) "Cabinet" is defined by KRS 199.011(3).

(3) "Child-caring facility" is defined by KRS 199.011(5).

(4) "Child-placing agency" is defined by KRS 199.011(6).

(5) "Kentucky National Background Check Program" or "NBCP" means a background screening program administered by the cabinet in accordance with 906 KAR 1:190.

(6) "Rap back system" is defined by KRS 199.011(14).

(7) "Staff member" is defined by KRS 199.642(1).

Section 2. Applicability, Implementation, and Enforcement. (1) This administrative regulation shall apply to child-caring or child-placing providers and their prospective and current staff members.

(2) A person who is a child-caring or child-placing staff member prior to the effective date of this administrative regulation shall submit to and complete background checks in accordance with this administrative regulation no later than July 1, 2023.

(3) A prospective child-caring or child-placing staff member shall complete the background check process required in accordance with this administrative regulation and have been found to have no disqualifying offense prior to becoming a child-caring or child-placing staff member.

(4) To assure timely processing of background checks, the cabinet shall prioritize the processing of background checks for prospective child-caring and child-placing staff members.

(5) A current or prospective child-caring or child-placing staff member shall be subject to background checks in accordance with Sections 3 and 4 of this administrative regulation.

Section 3. Procedures and Payments. (1) To initiate the process of obtaining a background check on a prospective or current child-caring or child-placing staff member, the provider shall:

(a) Request that the staff member provide a copy of his or her driver's license or other government-issued photo identification and verify that the photograph clearly matches the staff member;

(b) Request that the prospective or current staff member complete and sign the:

1. DPP-500, Private Child-Caring or Child-Placing Staff Member Waiver Agreement and Statement; and

2. DPP-501, Disclosures to be Provided to and Signed by the Applicant Private Child-Caring or Child-Placing Staff Member; and

(c) Log on to the NBCP portal and enter the prospective or current staff member's demographic information for a check of the:

1. Child abuse and neglect central registry pursuant to 922 KAR 1:470;

2. National Crime Information Center's National Sex Offender Registry in accordance with 34 U.S.C. 20921; and

3. Sex Offender Registry established in accordance with KRS 17.500 through 17.580.

(2)(a) In accordance with KRS 199.642, ~~[KRS ]~~336.220, and 42 U.S.C. 671(a)(20)(D), a child-caring or child-placing provider shall submit payment via credit or debit card for a state and national fingerprint-supported criminal history background check performed by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI), including the rap back system. If a staff **member is already enrolled in the NBCP and his or her[member's] rap back has not expired, a new fingerprint check shall not be required, but payment shall be required in order to receive a copy of the criminal history report.**

(b) A child-caring or child-placing provider enrolled in the Kentucky NBCP shall pay a fee not to exceed twenty-five (25) dollars in addition to any fees charged in accordance with paragraph (a) of this subsection for the actual cost of processing a fingerprint-supported state and national criminal background check and for providing rap back services.

(3) Upon submission of payment in accordance with subsection (2) of this section, the staff member shall:

(a) Have no more than thirty (30) calendar days from the date of payment pursuant to subsection (2) of this section to submit his or her fingerprints at an authorized collection site for NBCP; and

(b) Present his or her driver's license or other government-



issued photo identification to the designated agent at an authorized collection site prior to fingerprint submission.

(4) Upon completion of the background checks in accordance with this section and Section 4 of this administrative regulation, the cabinet:

(a) Shall provide notice to the provider within seven (7) business days in accordance with KRS 199.642(5) that the prospective or current staff member is:

1. Eligible for hire or continuation of employment; or

2. Not eligible for hire or continued employment if the prospective or current staff member is found by the cabinet to have a disqualifying background check result in accordance with Section 5 of this administrative regulation;

(b) May release any record of state criminal history found in the files of the Kentucky centralized criminal history record information system to the provider or another entity included on the waiver in accordance with subsection (1)(b) of this section; and

(c) Shall, upon receipt of written request from an applicant, send a copy of a KSP or FBI criminal history report to the prospective or current staff member by certified mail, restricted delivery service. The staff member shall show proof of identity and sign to receive his or her criminal history report from the local post office.

(5) A provider shall not be obligated to employ or offer employment to an individual who has been found by the cabinet to be eligible for hire pursuant to subsection (4)(a)1. of this section.

(6) A staff member may submit a request for a protection and permanency record in accordance with 922 KAR 1:510.

(7)(a) If the NBCP portal is not operational, the cabinet may request a federal waiver that would allow a prospective staff member to undergo a:

1. Child abuse and neglect central registry check pursuant to 922 KAR 1:470;

2. Criminal records check conducted by the Kentucky Justice and Public Safety Cabinet or Administrative Office of the Courts;

3. National Crime Information Center's National Sex Offender Registry check in accordance with 34 U.S.C. 20921; and

4. Sex Offender Registry check in accordance with KRS 17.500 through 17.580.

(b) A background check completed through the NBCP portal shall be required as soon as operational.

Section 4. Checks of Other States. (1) A prospective or current staff member who resides in or has resided in another state within the last five (5) years shall:

(a) Request from each state of current or prior residency, in accordance with the state's laws, policies, and procedures, with a courtesy notice to the cabinet:

1. An in-state criminal records check by:

a. Means of fingerprints for the state of residence; or

b. Any means accepted by a state of prior residency;

2. A check of the state's sex offender registry or repository; and

3. A check of the state-based child abuse and neglect registry and database; and

(b) Direct results of the checks required in paragraph (a) of this subsection to the Department for Community Based Services, Division of Protection and Permanency, 275 East Main Street, 3E-A, Frankfort, Kentucky 40621, or securely send results to privateagencyliaison@ky.gov.

(2) If the prospective or current staff member's current or prior state of residency participates in the FBI's National Fingerprint File Program, the staff member shall be exempt from the requirements of subsection (1)(a)1. of this section.

(3) In accordance with KRS 336.220, a child-caring or child-placing provider shall pay a fee charged by another state for a background check as permitted pursuant to 45 C.F.R. 98.43(f) for a prospective or current staff member.

(4) If another state fails to respond to a check submitted in accordance with subsection (1) of this section within thirty (30) calendar days from the date of the background check's request as verified by the staff member, the cabinet shall:

(a) Process a staff member's background checks and issue

notice to the provider in accordance with Section 3(4) of this administrative regulation to ensure compliance with 45 C.F.R. 98.43(e); and

(b) Send notice in accordance with Section 3(4) of this administrative regulation if:

1. Another state provides requested background check results at a later date; and

2. A disqualifying background check result is identified.

Section 5. Disqualifying Background Check Results. (1) Unless a rehabilitative review pursuant to Section 8 of the administrative regulation determines the individual is eligible to be hired, an individual shall be ineligible to be hired or otherwise serve as a staff member if the individual:

(a) Meets a criterion specified in 45 C.F.R. 98.43(c);

(b) Has a felony conviction, entered an Alford plea, a plea of guilty, or a plea of nolo contendere, related to:

1. A spouse, a child, sexual violence, or death as established in 42 U.S.C. 671(a)(2); or

2. Physical abuse, battery, drugs, or alcohol within the five (5) year period prior to the check;

3. KRS Chapter 209, protection of adults;

4. KRS Chapter 506, inchoate offenses;

5. KRS Chapter 511, burglary and related offenses;

6. KRS Chapter 515, robbery;

7. KRS Chapter 520, escape and other offense related to custody;

8. KRS Chapter 525, riot, disorderly conduct, and related offenses;

9. KRS Chapter 527, offenses relating to firearms and weapons;

10. KRS Chapter 529, prostitution offenses; or

11. KRS Chapter 530, family offenses, excluding KRS 530.050;

(c) Has a criminal conviction relating to child abuse or neglect;

(d) Has a civil judicial determination related to child abuse or neglect;

(e) Has been found to have:

1. Committed sexual abuse or sexual exploitation of a child; or

2. Been responsible for a child fatality or near fatality related to abuse or neglect;

(f) Has been convicted of, or has entered an Alford plea, a plea of guilty, or a plea of nolo contendere to:

1. A sex or violent crime pursuant to KRS 17.165; or

2. An offense under a criminal statute of the United States or of another state similar to an offense specified in this paragraph;

(g) Is listed on the:

1. Central registry established in accordance with 922 KAR 1:470; or

2. Another state's state-based child abuse and neglect registry or database;

(h) Has an open warrant for a disqualifying offense established in this subsection; or

(i) Has a pending charge for a criminal offense specified in this subsection.

(2) An individual who has received a pardon for a disqualifying offense, has had the record expunged, or has evidenced dismissal of a warrant or disqualifying charge may serve as a staff member.

(3) Unless there is a pending informal review, rehabilitative review, or appeal in accordance with Section 6 of this administrative regulation, a provider shall be subject to a cabinet action against the provider's license in accordance with 922 KAR 1:305, if the provider employs a staff member who is ineligible for employment pursuant to subsection (1) of this section.

Section 6. Notice of a Disqualifying Background Check Result and Appeals. (1) The cabinet shall notify each prospective or current staff member determined to have a disqualifying background check result in accordance with Section 5 of this administrative regulation.

(2) In addition to the cabinet's notification in accordance with subsection (1) of this section, a provider that receives notice from the cabinet that a prospective or current staff member has been

determined to have a disqualifying background check result in accordance with Section 5 of this administrative regulation shall notify the staff member of the cabinet's determination within three (3) business days of receipt of the notice.

(3) A prospective or current staff member who receives notice of having a disqualifying background check result in accordance with Section 5 of this administrative regulation may:

(a) Challenge the accuracy of the cabinet's determination by submitting a written request for informal review, including any information the individual wishes to be considered, to the Department for Community Based Services, Division of Protection and Permanency, 275 East Main Street, 3E-A, Frankfort, Kentucky 40621, within ten (10) calendar days of the date of notice in accordance with subsection (1) of this section; or

(b) Request a rehabilitative review pursuant to Section 8 of this administrative regulation.

(4) Upon completion of an informal review upon request pursuant to subsection (3)(a) of this section, the cabinet shall provide written notice of the cabinet's decision to uphold or rescind the notice of disqualifying background check result to the prospective or current staff member.

(5) A prospective or current staff member may appeal the results of an informal review or a rehabilitative review pursuant to Section 8 of this administrative regulation, in accordance with 922 KAR 1:480.

(6) If a prospective or current staff member wishes to challenge the accuracy of a criminal background check, the cabinet shall refer the individual to the appropriate state or federal law enforcement agency.

(7) If a prospective or current staff member challenges the finding that he or she is the true subject of the results from a registry or repository check, the cabinet shall refer the individual to the agency responsible for maintaining the registry or repository.

Section 7. Termination ~~[or Relocation]~~ of a Staff Member upon Receipt of Notice of a Disqualifying Background Check Result. (1) If a prospective or current staff member has not requested an informal review or a rehabilitative review in accordance with Section 8 of this administrative regulation, the child-caring or child-placing provider shall:

(a) Terminate the staff member no later than ten (10) calendar days after receipt of notice of the cabinet's determination, including the disqualifying background check result; and

(b) Use the NBCP to provide electronic notification to the cabinet affirming the staff member's dismissal within three (3) business days of termination.

(2)(a) If a prospective or current staff member requests an informal review or a rehabilitative review in accordance with Section 8 of this administrative regulation, the child-caring or child-placing provider:

1. May retain the staff member pending resolution of the informal review or rehabilitative review; and

2. Shall ensure that the staff member:

a. Is subject to direct, onsite supervision; or

b. Does not have duties or proximity that involves one-on-one contact with a child in care.

(b) A provider shall terminate the staff member if the:

1. Informal review upholds the cabinet's determination of a disqualifying background check result, or the rehabilitative review committee does not grant a waiver; and

2. Staff member does not request an administrative hearing in accordance with Section 6(5) of this administrative regulation, in which the provider shall terminate the staff member no later than the thirty-first calendar day following written notice of the results of the informal review or rehabilitative review.

(c) If a staff member requests an administrative hearing in accordance with Section 6(5) of this administrative regulation to appeal the decision from an informal review or rehabilitative review, the provider:

1. May retain the staff member pending the appeal's resolution if the staff member:

a. Remains subject to direct, onsite supervision; or

b. Does not have duties or proximity that involves one-on-one

contact with a child in care; and

2. Shall terminate the staff member no later than the thirty-first calendar day from the issuance of the final order if the staff member does not prevail.

(d) Using the NBCP, the provider shall provide electronic notification to the cabinet affirming the individual's dismissal within three (3) business days of the termination.

Section 8. Rehabilitative Review. (1)(a) A prospective or current staff member found to have a disqualifying background check result shall be eligible for consideration of rehabilitation under an independent review process.

(b) Consideration of a disqualifying background check result under the rehabilitative review process described in this section shall not apply to:

1. A disqualifying felony offense that occurred less than ten (10) years prior to the date of the criminal background check;

2. Any disqualifying felony or misdemeanor offense related to abuse, neglect, or exploitation of a child;

3. Registration as a sex offender under federal law or under the law of any state;

4. A sex or violent crime as defined by KRS 17.165; or

5. A child abuse and neglect substantiated finding that:

a. Occurred less than ~~seven (7)~~**five (5)** years prior to the date of the registry check; or

b. Involved:

(i) Sex abuse or sex exploitation of a child;

(ii) A child fatality related to abuse or neglect; or

(iii) A near fatality of a child related to abuse or neglect.

(2)(a) A prospective or current staff member may submit a written request for a rehabilitative review to the cabinet no later than fourteen (14) calendar days from the date of the notice of the cabinet's determination issued pursuant to Section 3(4) or 6(4) of this administrative regulation regarding a determination of a disqualifying background check result.

(b) If a prospective or current staff member requests a rehabilitative review, the staff member:

1. May be retained by the provider pending the rehabilitative review; and

2. Shall be subject to restrictions and termination in accordance with Section 7 of this administrative regulation.

(3) The request for a rehabilitative review shall include the following information:

(a) A written explanation of each disqualifying background check result, including:

1. A description of the events related to the disqualifying background check result;

2. The number of years since the occurrence of the disqualifying background check result;

3. The age of the individual at the time of the disqualifying background check result; and

4. Any other circumstances surrounding the disqualifying background check result;

(b) Official documentation showing that all fines, including court-imposed fines or restitution, have been paid or documentation showing adherence to a payment schedule, if applicable;

(c) The date probation or parole was satisfactorily completed, if applicable;

(d) Employment and character references, including any other evidence demonstrating the ability of the individual to perform the employment responsibilities and duties competently; and

(e) Evidence that the individual has pursued or achieved rehabilitation with regard to a disqualifying background check result.

(4) A rehabilitative review shall be conducted by a committee of three (3) employees of the cabinet, none of whom were responsible for determining that the individual has a disqualifying background check result.

(5) The committee shall consider the information required under subsection (3) of this section, and shall also consider mitigating circumstances including:

(a) The amount of time that has elapsed since the disqualifying

background check result;

(b) The lack of a relationship between the disqualifying background check result and the position for which the individual has applied; and

(c) Evidence that the applicant has pursued or achieved rehabilitation with regard to the disqualifying background check result.

(6) No later than thirty (30) calendar days from receipt of the written request for the rehabilitative review, the cabinet shall send the committee's determination on the rehabilitation waiver to the prospective or current child care staff member.

(7) The decision of the committee shall be subject to appeal in accordance with Section 6(5) of this administrative regulation.

(8) A provider shall not be obligated to accept an individual who is granted a waiver pursuant to this section as a staff member.

Section 9. Status of Employment. (1) A provider shall maintain the employment status of each staff member who has submitted to a fingerprint-based criminal background check by reporting the status using the NBCP Web-based system.

(2) The cabinet shall inspect a provider to verify conformity with this administrative regulation.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DPP-500, Private Child-Caring or Child-Placing Staff Member Waiver Agreement and Statement", 04/2022; and

(b) "DPP-501, Disclosures to be Provided to and Signed by the Applicant Private Child-Caring or Child-Placing Staff Member", 04/2022.

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

MARTA MIRANDA-STRAUB, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 7, 2022

FILED WITH LRC: September 12, 2022 at 12:50 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](mailto: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 requirements for fingerprint-based state and national criminal background checks for prospective and current private child-caring and child-placing staff members, as defined by KRS 199.642(1), and includes reporting requirements and an appeals process. This administrative regulation also incorporates forms required in order to obtain a background check.

(b) The necessity of this administrative regulation: 42 U.S.C. 671(a)(20)(D) includes that any child-care institution, including a group home, residential treatment center, shelter, or other congregate care setting, conduct criminal records checks, including fingerprint-based checks of national crime information databases and checks on any adult working in these facilities. Senate Bill 40 from the 2020 Regular Session of the General Assembly amended KRS 199.642(2) to require that private child-caring and child-placing staff members, as defined by KRS 199.642(1), shall submit to national and state fingerprint-supported criminal background checks. The utilization and implementation of additional fingerprint-based background checks was delayed during the COVID-19 pandemic and Kentucky operated under a federal waiver in which name-based background checks were completed temporarily. However, utilization of the National Background Check Program has resumed and capacity has been increased to include checks

for these specific individuals and Department for Community Based Services front-line staff.

(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 requirements for fingerprint-based state and national criminal background checks for these prospective and current staff members.

(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 requirements for fingerprint-based state and national criminal background checks for these staff members.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation. This proposed administrative regulation is being amended in response to comments received during the public comment period. The administrative regulation is being clarified to address the instance of a prospective or current staff member already enrolled in a National Background Check Program, to remove an erroneous word from a section title, and to amend the timeframe for which a substantiated finding of child abuse or neglect may be considered under the rehabilitative review process for consistency with other background check programs.

(b) The necessity of the amendment to this administrative regulation: The proposed administrative regulation is being amended in response to comments received during the public comment period. These amendments provide clarification and consistency between programs.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed amendments provide clarification and are consistent with authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendments provide clarification and are consistent with authorizing statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Private child-caring or child-placing agencies will be required to have prospective and current staff undergo state and national criminal background checks. Data from the Office of Inspector General states that there are 1,352 private child-caring employees statewide and 1,066 private child-placing employees statewide. Approximately 180 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: A current private agency staff member meeting the definition established in KRS 199.642(1) will be required to submit to a fingerprint-based state and national criminal background check by July 2, 2023. A prospective private child-caring or child-placing staff member shall complete the background check process required in accordance with this administrative regulation and have been found to have no disqualifying offense prior to becoming a child-caring or child-placing staff member.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Cabinet data indicates approximately 2,500 staff members being impacted by this requirement across approximately 180 private agencies. The cost to the private agencies is \$63.25 per check and includes a continuous rap back system check for five (5) years.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The processes and requirements contained in this administrative regulation will ensure that private agency staff who are working closely with vulnerable children, sometimes day and night, have undergone a thorough check of state and national registries and records and no disqualifying offenses against them were found. This administrative regulation also ensures compliance with statute.

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

(a) Initially: This administrative regulation includes administrative duties for the cabinet, but the administrative cost will be absorbed within appropriations.

(b) On a continuing basis: The administrative cost will be absorbed within appropriations.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is not an increase in fees, but this administrative regulation does establish a new fee for private child-care and child-placing agencies. The cost of this statutorily-required national and state background check is \$63.25 per check.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does include a new fee for private child-care and child-placing agencies. The cost of this statutorily-required national and state background check is \$63.25 per check.

(9) TIERING: Is tiering applied? Tiering is not applicable as this administrative regulation applies equally to all individuals meeting the statutory definition of "staff member" established by KRS 199.642(1).

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 671(a)(20)(D)

(2) State compliance standards. KRS 194A.050(1), 199.640(5)(a), 199.642(8)

(3) Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 671(a)(20)(D) includes that any child-care institution, including a group home, residential treatment center, shelter, or other congregate care setting, conduct criminal records checks, including fingerprint-based checks of national crime information databases and checks on any adult working in these facilities.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes, this administrative regulation imposes additional requirements that are necessary for compliance with state law.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation necessary for compliance with federal and state laws regulating private child-caring and child-placing staff.

#### 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 is impacted by this administrative regulation. The Department for Community Based Services regulates these providers and staff and the Office of Inspector General houses the National Background Check Program in Kentucky and licenses these private agencies, ensuring compliance with regulatory requirements. These checks are administered through the Kentucky State Police.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.640(5)(a), 199.642(8), 42 U.S.C. 671(a)(20)(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? This administrative regulation will generate no revenue. Fees collected by the Kentucky State Police for the purpose of conducting the background check do not exceed the actual cost of performing the check.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no revenue. Fees collected by the Kentucky State Police for the purpose of conducting the background check do not exceed the actual cost of performing the check.

(c) How much will it cost to administer this program for the first year? Minimal administrative costs absorbed by the cabinet.

(d) How much will it cost to administer this program for subsequent years? Minimal administrative costs absorbed by the cabinet.

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 seeks to ensure the protection of children and the cost savings of preventing the maltreatment of children cannot be estimated with certainty.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation seeks to ensure the protection of children and the cost savings of preventing the maltreatment of children cannot be estimated with certainty.

(c) How much will it cost the regulated entities for the first year? The requirements contained in this administrative regulation will be effective with the administrative regulation for new staff. Regulated entities will have until July 2, 2023, to meet the requirements contained in this administrative regulation for existing staff. Therefore, the cost of \$63.25 per background check will be realized as new staff are hired and as an agency chooses to conduct the checks for already-existing staff prior to July 2, 2023.

(d) How much will it cost the regulated entities for subsequent years? The cost of these background checks realized by regulated entities is \$63.25 per background check. Cabinet data indicates approximately 2,500 staff members being impact by this requirement across approximately 180 private agencies. Staffing is expected to increase as higher rates for care have been provided, approximately a staffing increase of 500 for fiscal estimate purposes. This cost includes a continuous rap back system check for five (5) years (at least five years of continuous background checks without additional fee). Dividing 3,000 staff by 180 agencies multiplied by \$63.25 results in an average cost of \$1,054.17 per regulated entity to be realized over the next 15 months.

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)] No, this administrative regulation is not anticipated to have an economic impact of \$500,000 or more. The average cost per regulated entity is estimated to be \$1,054.17 to meet the requirements of this administrative regulation.

PROPOSED AMENDMENTS

Public comment periods for ordinary, non-emergency regulations are at least two months long. For other regulations with open comment periods, please also see last month's [Administrative Register of Kentucky](#).

**EDUCATION AND LABOR CABINET**  
**Office of Adult Education (KYAE)**  
**(Amendment)**

**13 KAR 3:050. GED® eligibility requirements.**

RELATES TO: KRS 158.135(1)(a), 158.143, 158.6455, 151B.403

STATUTORY AUTHORITY: KRS 151B.403

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.403(1) requires the Office of Adult Education (Kentucky Adult Education)(~~Kentucky Skills U Program~~) within the Education and Labor Cabinet(~~Education and Workforce Development Cabinet~~) to promulgate administrative regulations to establish programs that, upon successful completion, result in the award of a high school equivalency diploma. KRS 151B.403(2) requires that at least one (1) of these programs shall include a test aligned with the College and Career Readiness Standards for Adult Education, or any other standards adopted by the federal Office of Career, Technical, and Adult Education (OCTAE), which upon passing, shall entitle students to receive a high school equivalency diploma. This administrative regulation establishes the eligibility requirements for taking a High School Equivalency Diploma test as defined in this administrative regulation.

Section 1. Definitions.

(1) "GED® Diploma" means the High School Equivalency Diploma required by this administrative regulation.

(2) "Kentucky Adult Education"(~~"Kentucky Skills U"~~) means the adult education program within the Office of Adult Education.

(3) "State agency children" or "state agency child" is defined by KRS 158.135(1)(a).

Section 2. Eligibility Requirements. The GED® test shall be administered to an applicant with a Kentucky address who:

(1) Has reached his or her 19th birthday;

(2)(a) Has reached his or her 18th birthday; and

(b)1. Except as established in Section 3 of this administrative regulation, has officially withdrawn from public or private school for at least ninety (90) days as certified by the local school district;

2. Is committed or placed in an adult correctional facility;

3. Is enrolled in the Jobs Corps Program of Instruction; or

4. Is enrolled in a National Guard Youth "ChalleNGe" program;

or

(3)(a) Has reached his or her 17th birthday;

1. ~~(b)~~ Is considered a state agency child, as defined by KRS 158.135(1)(a); ~~or~~and

2. Is enrolled in a district-operated alternative program, is not on track to graduate (as defined by the local board of education), and has passed at least one section of the GED Ready test, and

~~(b)(e)~~ Is approved for the GED® test by the local school superintendent.

Section 3. Superintendent Waiver. The local school superintendent or designee in the district where the applicant currently resides may waive the ninety (90) day school withdrawal provision of Section 2(2)(b)1. of this administrative regulation if necessary due to a deadline for postsecondary enrollment, condition of employment, medical reason, family crisis, or other extenuating circumstances.

Section 4. Test Readiness. An applicant shall successfully complete and pass an official readiness test with the same passing scores required to pass the GED® test prior to taking the GED® test.

JOHN C. GREGORY, Executive Director

APPROVED BY AGENCY: August 12, 2022

FILED WITH LRC: September 7, 2022 at 2:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 1:00 p.m. (EDT) on November 29, 2022, at 500 Mero Street, First Floor, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be transcribed unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. (EDT) November 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Gloria Gardner, Coordinator, Office of Adult Education (Kentucky Adult Education), 500 Mero Street Mail Stop 5SC, Frankfort, Kentucky 40601; phone 502-892-3509; email Gloria.Gardner@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gloria Gardner, Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 164.0064(1) requires that the Kentucky Adult Education Program within the Education & Labor Cabinet promulgate administrative regulations to establish programs that, upon successful completion, result in the award of a high school equivalency diploma. KRS 164.0064(2) requires that at least one (1) of these programs shall include a test aligned with the College and Career Readiness Standards for Adult Education, or any other standards adopted by the federal Office of Career, Technical, and Adult Education (OCTAE), which upon passing, shall entitle students to receive a high school equivalency diploma. 13 KAR 3:010 identifies the GED® test as the valid means of measuring educational achievement in an adult who is a non-high school graduate and of comparing the adult's competency to that of high school graduates.

(b) The necessity of this administrative regulation: This administrative regulation establishes the eligibility requirements for taking the GED® test.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The amendment conforms to content of revised authorizing statutes.

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

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

(a) How the amendment will change this existing administrative regulation: This amendment adds a class of person eligible to take the GED exam: 17-year-olds enrolled in an alternative education program who are not on track to graduate. The amendment also updates the name of the agency to the current name of Kentucky Adult Education.

(b) The necessity of the amendment to this administrative regulation: This amendment incorporates changes to KRS 158.143 as signed by Governor Beshear on April 1, 2022.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation currently conforms to the content of HB194 which amended KRS 158.143.

(d) How the amendment will assist in the effective administration of the statutes: This regulation currently assists in the effective administration of statutes. The amendment assists in the administration of the statute with respect to a newly eligible

population.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: School boards in all 120 counties; Office of Adult Education (Kentucky Adult Education); Adult Education programs in all 120 counties; any person seeking to take the GED® exam (317,000 without high school diploma or GED® diploma).

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

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Affected entities will benefit from taking the GED® exam.

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

(a) Initially: This administrative regulation is already being administered as part of basic funding.

(b) On a continuing basis: This administrative regulation is already being administered as part of basic funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Office of Adult Education receives Title II Workforce Innovation and Opportunity Act funding (through the Adult Education and Family Literacy Act) and funding through Senate Bill 1 (2000) from the Commonwealth of Kentucky.

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

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

(9) TIERING: Is tiering applied? No.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School boards in all 120 Kentucky counties; Office of Adult Education (Kentucky Adult Education); Adult Education programs in 120 counties.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.143; KRS 164.0064; Workforce Innovation and Opportunity Act (Adult Education and Family Literacy Act).

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

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

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

(c) How much will it cost to administer this program for the first year? There is no additional cost to administering this regulation. Costs are covered in the basic funding received by Adult Education programs through OAE (KYAE).

(d) How much will it cost to administer this program for subsequent years? There is no additional cost to administering this

regulation. Costs are covered in the basic funding received by Adult Education programs through OAE (KYAE).

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

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: 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 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 generate additional cost.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation will not generate additional cost.

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

Cost Savings (+/-): 0

Expenditures (+/-): 0

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 administrative regulation will not have a major economic impact, as that term is defined above.

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

#### 101 KAR 2:210. 2023[2022] Plan Year Handbook for the Public Employee Health Insurance Program.

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

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.2254(1)(a)1 requires the secretary of the Personnel Cabinet to promulgate an administrative regulation to incorporate by reference the plan year handbook distributed by the Department of Employee Insurance to public employees covered under the self-insured plan and establishes the minimum requirements for the information included in the handbook. This administrative regulation incorporates by reference the plan year Benefits Selection Guide, which is the handbook distributed by the department to public employees for the 2023[2022] Plan Year as required by KRS 18A.2254(1)(a)1.

Section 1. The Department of Employee Insurance shall distribute or make available to the public employees covered under the self-insured plan the 2023[2022] Plan Year Kentucky Employees' Health Plan Benefits Selection Guide, which shall include the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to the public employees covered under the self-insured plan.

Section 2. Incorporation by Reference. (1) "2023[2022] Plan Year Kentucky Employees' Health Plan Benefits Selection Guide", 2023[2022] edition, is incorporated by reference.

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

GERINA D. WHETHERS, Secretary

APPROVED BY AGENCY: September 8, 2022

FILED WITH LRC: September 15, 2022 at 9:15 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on November 22, 2022, at 10:00 a.m. at 501 High Street, 3rd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on November 30, 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:** Chris Chamness, Staff Attorney, Office of Legal Services, Personnel Cabinet, 501 High Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-6815, fax (502) 564-7603, email [Chris.Chamness@ky.gov](mailto:Chris.Chamness@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chris Chamness

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the 2023 plan year handbook containing information about the self-insured health insurance plans offered through the Public Employee Health Insurance Program. The handbook, commonly referred to as the Benefits Selection Guide, is distributed to plan holders participating in the self-insured program. The Benefits Selection Guide contains the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan available to public employees through the self-insured program in 2023.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the statutory mandate of KRS 18A.2254. More specifically, KRS 18A.2254(1)(a) requires the Personnel Cabinet to promulgate an administrative regulation that incorporates by reference the 2023 plan year handbook that will be distributed to the public employees covered by the Public Employee Health Insurance Program. The handbook must be filed with the Legislative Research Commission on or before September 15 each year.

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation aids in the effectuation of the statute, KRS 18A.2254, by incorporating by reference the 2023 plan year handbook for the Public Employee Health Insurance Program in an administrative regulation. Further, this administrative regulation is the method by which the Personnel Cabinet will comply with KRS 18A.2254.

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

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

regulation incorporates by reference the 2022 plan year handbook, which constitutes a compilation of the premium rates and contributions, benefit options, eligibility rules, and enrollment information for participants of the Public Employee Health Insurance Program for plan year 2022. The amendment adds and incorporates by reference the 2023 plan year handbook, which contains the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan available to public employees for plan year 2023.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to give notice regarding the premiums, employee contributions, employer contributions, benefits, co-pays, coinsurance, and deductibles for each plan available to public employees under the Public Employee Health Insurance Program for plan year 2023. This amendment is also necessary to comply with the statutory mandate in KRS 18A.2254 to annually update the regulation incorporating the plan year handbook.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 18A.2254, the statute authorizing the self-insured plan under the Public Employee Health Insurance Program. KRS 18A.2254 mandates that the plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year. This amendment incorporates the 2023 plan year handbook by reference in accordance with KRS 18A.2254.

(d) How the amendment will assist in the effective administration of the statutes: This amendment conforms to the requirements of KRS 18A.2254, the statute authorizing the self-insured plan under the Public Employee Health Insurance Program. KRS 18A.2254 mandates that the plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year. This amendment incorporates the 2023 plan year handbook by reference in accordance with KRS 18A.2254.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects employees of state and select county and local government entities, including employees of the local school boards and districts. This administrative regulation also affects certain retirees as specified by KRS 18A.225. More specifically, and as defined by KRS 18A.225(1)(a), this administrative regulation affects approximately 178,270 employees and retirees eligible to participate in the Public Employee Health Insurance Program. In total, this administrative regulation affects 291,622 members in the self-insured plan including employees and retirees, qualifying beneficiaries, and dependents.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Affected entities will not be required to take any additional action to comply with this administrative regulation that incorporates the 2023 plan year handbook. The 2023 Benefits Selection Guide will provide information to the public employees covered under the Public Employee Health Insurance Program about the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for the 2023 plan year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation provides employer and employee premium contribution information for health plans available under the Public Employee Health Insurance Program for plan year 2023. There is no direct cost impact to employers participating in the Public Employee Health Insurance Program as a result of incorporating the 2023 plan year handbook into the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): For plan year 2023, participating



employers (entities) and participating employees and retirees and their beneficiaries and dependents covered under the Public Employee Health Insurance Program will have access to comprehensive health insurance benefits under all plans offered through the self-insured program. For plan year 2023, employee contributions to health coverage premiums remained unchanged across all plans, as compared to 2022 premiums. Employer premium contribution amounts increased 10% across all plans combined, as compared to 2022 premiums.

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation of this administrative regulation will be the Public Employee Health Insurance Trust Fund.

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

(8) State whether or not this administrative regulation 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? No, tiering is not applied because this administrative regulation applies equally to all participants in the Public Employee Health Insurance Program.

#### 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 will affect all employees of state and select county and local government entities, including employees of the local school boards and districts that participate in the Public Employee Health Insurance Program. As employers, this administrative regulation will affect state and select county and local government entities as well as local school boards and districts. This administrative regulation also affects retirees under the age of 65 who are eligible to participate in the Program by virtue of their participation in one of the state-administered retirement systems.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.225, 18A.225.3, 18A.225.4, 18A.225.5, 18A.225.9, 18A.226, 18A.227, 18A.227.1, 18A.228, 18A.228.6, 18A.228.7; 26 U.S.C. 21, 105, 106, 125, 129, 152, and 213 (Internal Revenue Code); Prop. Treas. Reg. 1.125-1 through 7; the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010); and the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152.

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

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

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

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

(d) How much will it cost to administer this program for

subsequent years? The 2023 plan year handbook will be online and distributed electronically rather than in printed hard copy. This method of distribution is expected to be a savings for the Public Employee Health Insurance Program during the 2022 open enrollment season and throughout the 2023 plan year. Should the distribution of the plan year handbook continue to be made available online and distributed only by electronic means in the future, the Public Employee Health Insurance Program could continue to recognize cost savings in subsequent years.

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

Revenues (+/-): \$0

Expenditures (+/-): \$0

Other Explanation: The regulation does not create any cost savings or expenditures beyond the re-sources to promulgate this regulation.

(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 regulation does not create any 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? None. This regulation will not generate any cost savings for regulated entities during subsequent years.

(c) How much will it cost the regulated entities for the first year? This regulation does not create any cost for regulated entities during the first year.

(d) How much will it cost the regulated entities for subsequent years? The regulation does not create any cost savings or expenditures 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 (+/-): \$0

Expenditures (+/-): \$0

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 will not have a major economic impact.

#### BOARDS AND COMMISSIONS

##### Board of Pharmacy (Amendment)

#### 201 KAR 2:030. License transfer and non-resident pharmacist license.

RELATES TO: KRS 315.191(1)(c), (d), 315.210. KRS 315.050  
STATUTORY AUTHORITY: KRS 218A.205(8), 315.191(1)(a), (c), (d), 315.210

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.210 authorizes the board to establish conditions for licensure by reciprocity. KRS 218A.205(8) requires the board to establish requirements for background checks for licensees. This administrative regulation establishes conditions, forms, and examination requirements for licensure by reciprocity and for licensure of nonresident pharmacists.

##### Section 1. Definitions.

(1) "Board" is defined by KRS 315.010(4).

(2) "License transfer" means a license to practice pharmacy in Kentucky issued by the board to a pharmacist licensed in another jurisdiction.

(3) "NABP" means the National Association of Boards of



Pharmacy.

(4) "Non-Resident Pharmacist License" means a license issued by the board to a pharmacist licensed and located in another jurisdiction to practice pharmacy to citizens in Kentucky.

Section 2. An application~~[applicant]~~ licensed in another jurisdiction shall be eligible for license transfer, if the:

(1) Requirements for licensure of the jurisdiction that granted his or her license met or exceeded Kentucky requirements for licensure when the license in the other jurisdiction was granted;

(2) Applicant holds in good standing, an active license to practice pharmacy;

(3) Applicant has:

(a) Completed and certified the NABP Preliminary Application for Transfer of Pharmacist License form; and

(b) Received an NABP Official Application for Transfer of Pharmacist License;

(4) Applicant is currently in good standing in the jurisdiction from which he or she has applied;

(5) Applicant has successfully completed an examination in jurisprudence;

(6) Applicant has submitted to a nation-wide criminal background investigation by means of fingerprint check by the Department of Kentucky State Police and the Federal Bureau of Investigation; and

(7) Applicant has submitted to a query to the National Practitioner Data Bank of the United States Department of Health and Human Services.

Section 3. Required Information. An applicant shall provide the information required by the NABP Preliminary Application for Transfer of Pharmacist License form, including:

(1) Name, maiden, and other names used currently or previously;

(2) Address, telephone number;

(3) Date of birth;

(4) Social Security number;

(5) Citizenship;

(6) Sex;

(7) State of original license by examination, including:

(a) License number;

(b) Original date of issue;

(c) Current status of original licensure; and

(d) State for which license transfer is requested;

(8) Pharmacy education, including:

(a) Name and location of pharmacy school;

(b) Name of pharmacy degree;

(c) Date degree was received; and

(d) Other professional degrees, including the information specified by paragraphs (a) to (c) of this subsection;

(9) Whether the applicant has earned certification by the Foreign Pharmacy Graduate Examination Committee, and, if so, the examination equivalency number assigned;

(10) Total hours of practical experience as an intern prior to licensure as a pharmacist;

(11) States, dates, and results of pharmacist licensure examinations;

(12) Pharmacist licenses currently held, including issue date, expiration date, status, and any board action taken against the licensee;

(13) Practice and employment, including nonpharmacist employment, from the past three (3) years;

(14) Record of charges or convictions of any felony or misdemeanor offense, other than traffic offenses, and whether or not a sentence was imposed or suspended;

(15) Record of any surrender of a pharmacist license or registration issued by the federal government or any state controlled substance authority;

(16) Record of any pharmacist license revocation, suspension, restriction, termination, or other disciplinary action by any board of pharmacy or other state authority;

(17) Record of whether the pharmacist is currently under investigation or subject to disciplinary action by the licensing jurisdiction, federal Food and Drug Administration, federal Drug

Enforcement Administration or any state drug enforcement authority for the violation of any state or federal pharmacy, liquor, or drug laws;

(18) Record of any condition or impairment, such as substance or alcohol abuse or dependency that in any way affects the pharmacist's ability to practice pharmacy in a safe and competent manner; and

(19) Record of any application for initial licensure, renewal licensure, or licensure by transfer that was denied by any licensing authority, whether in pharmacy or any other profession.

Section 4. The board shall accept license transfer applications from jurisdictions that:

(1) Are an active member of the NABP; and

(2) Grant license transfers to pharmacists pursuant to conditions and requirements that are the equivalent of conditions and requirements established by the board.

Section 5. An applicant for license transfer shall take and pass the Multistate Pharmacy Jurisprudence Examination administered by the NABP.

Section 6. An applicant licensed in another jurisdiction shall be eligible for non-resident pharmacist license if the applicant:

(1) Holds in good standing an active license to practice pharmacy in any state;

(2) The applicant is issued a NABP Verify credential; and

(3) The applicant submits to a fingerprint-supported criminal record check by the Department of Kentucky State Police and the Federal Bureau of Investigation pursuant to KRS 218A.205(8).

Section 7. An applicant for non-resident pharmacist license shall be exempt from:

(1) The requirements for license transfer; and

(2) The Multistate Pharmacy Jurisprudence Examination administered by NABP.

Section 8. A non-resident pharmacist licensee shall:

(1) Maintain participation in the NABP Verify Program;

(2) Submit an annual renewal of pharmacist license; and

(3) Be exempt from the continuing education requirements of Kentucky.

(4) Pay the annual renewal of a pharmacist license fee specified by 201 KAR 2:050 Section 1(3).

Section 9. The following acts are prohibited with the utilization of a non-resident pharmacist license:

(1) Engaging in the practice of pharmacy in Kentucky while:

(a) Residing in Kentucky; or

(b) Employed by a pharmacy located in Kentucky; and

(2) Serving as a pharmacist-in-charge of a Kentucky permitted resident or nonresident pharmacy.

Section 10.~~[Section 6.]~~ Fee. ~~[An applicant shall include the fees specified by 201 KAR 2:050, Section 1(2) and (19).]~~

(1) An applicant for license transfer shall include the fee specified by 201 KAR 2:050, Section 1(2) and (19); and

(2) An applicant for non-resident pharmacist licensure shall include the same fee as an applicant for license transfer specified by 201 KAR 2:050, Section 1(2).

Section 11. Board Discretion.

(1) The board maintains the discretion to deny an applicant a licensee if the applicant fails to demonstrate good mental health and moral character pursuant to KRS 315.050(1);

(2) The board may waive the provisions of Section 9 during a declared state of emergency.

Section 12.~~[Section 7.]~~ Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "NABP Preliminary Application for Transfer of Pharmacist License", April 2018[-is incorporated by reference].

(b) "Application for Non-Resident Pharmacist License", 09/2022.

(c) "Renewal Application for Non-Resident Pharmacist License", 09/2022.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. or on the Web site at <https://pharmacy.ky.gov/professionals/Pages/Pharmacists.aspx> [<https://pharmacy.ky.gov/professionals/Pages/Reciprocal-Information.aspx>].

CHRISTOPHER HARLOW, Pharm.D., Executive Director

APPROVED BY AGENCY: September 14, 2022

FILED WITH LRC: September 14, 2022 at 3:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 30, 2022, at 9:00 a.m. Eastern Time via zoom teleconference and at the Kentucky Transportation Cabinet Auditorium, 200 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 November 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Christopher Harlow

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes conditions, forms, and examination requirements for licensure by reciprocity and for licensure of non-resident pharmacists.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to inform pharmacists of the conditions, forms, and examination requirements for reciprocal licensure and non-resident licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation, authorized by KRS 315.191(1)(a), establishes conditions, forms, and examination requirements for licensure by reciprocity and for licensure of non-resident pharmacists. This administrative regulation conforms to the authorizing statute because the authorizing statute gives the board authority to promulgate administrative regulations pertaining to pharmacists and pharmacies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure that pharmacists are informed of the conditions, forms, and examination requirements for reciprocal licensure and non-resident 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: This amendment to an existing administrative regulation establishes a new classification of pharmacist licensure. This amendment to an existing administrative regulation establishes conditions, forms, and examination requirements for licensure of non-resident pharmacists.

(b) The necessity of the amendment to this administrative regulation: This amendment to an existing administrative regulation is necessary to inform non-resident pharmacists of the conditions, forms, and examination requirements for non-resident licensure.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment to an existing administrative regulation, authorized by KRS 315.191(1)(a), establishes conditions, forms, and examination requirements for non-resident licensure. This amendment to an existing administrative regulation conforms to the authorizing statute because KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations pertaining to pharmacists and pharmacies.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides rules for non-resident pharmacists licensure.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates that pharmacists seeking reciprocity and non-resident pharmacists will be affected, as pharmacists seeking reciprocity and non-resident pharmacists will need to comply with this administrative regulation to obtain licensure.

(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: 1. Pharmacists seeking reciprocity and non-resident pharmacists will have to familiarize themselves with this administrative regulation. 2. This administrative regulation establishes conditions, forms, and examination requirements for licensure by reciprocity and for licensure of non-resident pharmacists. 3. The board will help educate identified entities of this amendment to an existing administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to each entity identified is two-hundred and fifty dollars, as each non-resident licensure application and reciprocal licensure application is accompanied with a two-hundred and fifty dollar fee. The annual renewal fee is \$105 for non-resident pharmacist licenses and regular pharmacist licenses.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will ensure pharmacists seeking reciprocity and non-resident pharmacists are informed of the requirements for licensure.

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

(a) Initially: \$20,000 annually.

(b) On a continuing basis: \$20,000 annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Each non-resident licensure application and reciprocal licensure application is accompanied with a two-hundred and fifty dollar fee to cover the administrative cost.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This regulation establishes a new classification of pharmacist licensure which assess a fee at the same rate as the license transfer already provided in this rule.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation establishes a new classification of pharmacist licensure which assess a fee at the same rate as the license transfer already provided in this rule.

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation is applicable to all pharmacists seeking license transfer and all out of state pharmacists seeking a nonresident license.

#### 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 Board of Pharmacy 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 315.191(1)(a).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate approximately two-hundred and fifty dollars per non-resident pharmacist that applies for non-resident licensure. The Board anticipates between two thousand and four thousand applicants for non-resident licensure.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate two hundred and fifty dollars per applicant in the coming years and ninety-five dollars for each non-resident pharmacist during annual renewal periods.

(c) How much will it cost to administer this program for the first year? Twenty thousand dollars.

(d) How much will it cost to administer this program for subsequent years? Twenty thousand dollars.

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

Revenues (+/-): +750,000

Expenditures (+/-): -20,000

Other Explanation: We are operating with estimates from North Carolina, as they have recently implemented a similar program. So far in 2022, North Carolina has had 4,500 applicants. We estimate between 2,000 and 4,000 new applicants the first year. For subsequent years, we anticipate between 100 and 500 applicants each year.

(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 from this administrative regulation.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no cost savings from this administrative regulation.

(c) How much will it cost the regulated entities for the first year? It is dependent on the number of pharmacists that serve Kentucky patients yet are currently unlicensed. Because these individuals are currently unlicensed, we do not have a certain estimate. For each pharmacist that becomes licensed, there is a \$250 initial licensing fee and a \$95 annual renewal fee.

(d) How much will it cost the regulated entities for subsequent years? Approximately \$20,000 to administer the non-resident pharmacist licenses and annual renewals.

Cost Savings (+/-): 0

Expenditures (+/-): -\$750,000

Other Explanation: We are operating with estimates from North Carolina, as they have recently implemented a similar program. So far in 2022, North Carolina has had 4,500 applicants. We estimate between 2,000 and 4,000 new applicants the first year. For subsequent years, we anticipate between 100 and 500 applicants each year.

(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.

## BOARDS AND COMMISSIONER Board of Pharmacy (Amendment)

### 201 KAR 2:360. Naloxone dispensing.

RELATES TO: KRS 217.186

STATUTORY AUTHORITY: KRS 217.186, KRS 315.191(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.186 requires the Board of Pharmacy to promulgate administrative regulations governing dispensing of naloxone by a pharmacist pursuant to a physician-approved protocol. This administrative regulation establishes the minimum requirements for the pharmacist to be able to dispense naloxone pursuant to a physician-approved[approval] protocol. This administrative regulation also provides the requirements for a pharmacy to stock naloxone to an emergency department.

#### Section 1. Certification.

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

- (a) Name;
- (b) Address;
- (c) Phone number; and
- (d) Pharmacist license number.

(2) The board shall issue the certification to a pharmacist within thirty (30) days of the receipt of the application.

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

(1) The pharmacist has met the requirements of Section 1 of this administrative regulation;

(2) The pharmacist has received his or her certification;

(3) The pharmacist has a physician-approved protocol that meets the minimum requirements of Section 3 of this administrative regulation; and

(4) The pharmacist documents the dispensing event in the pharmacy management system including:

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

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

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

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

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

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

- (a) Name of product;
- (b) Dose; and
- (c) Route of administration;

(3) Specific education to be provided to the person whom the naloxone is dispensed;

(4) Procedures for documentation of naloxone dispensation, including procedures for notification of the physician authorizing the protocol, if desired by the physician in accordance with KRS 217.186(6)(b)(3)[KRS 217.186(5)(b)3];

(5) The length of time the protocol is in effect;

(6) The date and signature of the physician approving the

protocol; and

(7) The names and work addresses of pharmacists authorized to initiate dispensing of naloxone under the protocol.

(8) Authorization for naloxone to be supplied to an emergency department for dispensing under the protocol.

Section 4. Education to be Provided to Person Receiving Naloxone Prescription Under Protocol. Except as described in Section 5(e), a pharmacist dispensing naloxone to a person or agency not operating a harm reduction program shall provide verbal counseling and written educational materials appropriate to the dosage form of naloxone dispensed.

Section 5.

(1) Nothing shall prohibit a pharmacist from supplying naloxone to an emergency department to be dispensed per the physician approved protocol provided that:

(a) If the pharmacist is providing the naloxone from a pharmacy other than the institutional pharmacy, the pharmacy is under common ownership or has a written service agreement with the hospital;

(b) The naloxone is stored in a locked drug storage area or automated pharmacy system;

(c) Access to the naloxone storage area is monitored and approved per a service agreement or hospital policy;

(d) There is a monthly documented check of the naloxone storage area for proper storage, labeling, education material, and expiration dating;

(e) With the exception of patient name, the pharmacist labels the naloxone in accordance with KRS 217.065 prior to supplying to the emergency department;

(f) Naloxone from this supply is provided to the patient by a licensed health care provider as described in KRS 217.186(2);

(g) The patient is provided written education materials appropriate to the dosage form of naloxone which includes the telephone number of the supplying pharmacy;

(h) A record of each provision to a patient is communicated to the providing pharmacy and documented in the pharmacy management system; and

(i) The dispensing record is reviewed by a pharmacist at the supplying pharmacy within one (1) pharmacy business day.

(2) Dispensing from an emergency drug stock shall not require a prospective drug use review.

Section 6. [Section 5.] Incorporation by Reference.

(1) "Application for Pharmacist Certification for Naloxone Dispensing", Form 1, 6/2021, is incorporated by reference.

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

CHRISTOPHER HARLOW, Pharm.D., Executive Director

APPROVED BY AGENCY: September 14, 2022

FILED WITH LRC: September 14, 2022 at 3:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 30, 2022, at 9:00 a.m. Eastern Time via zoom teleconference and at the Kentucky Transportation Cabinet Auditorium, 200 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 November 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Christopher Harlow

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum requirements for the pharmacist to be able to dispense naloxone pursuant to a physician-approval protocol to an individual, agency or hospital emergency room stock.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to enable the dispensing of naloxone as part of harm reduction programs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation, authorized by KRS 217.186, establishes the minimum requirements for the pharmacist to dispense naloxone pursuant for harm reduction programs and pursuant to a physician approved protocol.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 217.186 enables the Board of Pharmacy to promulgate an administrative regulation to identify the appropriate procedures for the dispensing of naloxone by a pharmacist to an individual or an agency.

(2) If 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 authorizes emergency departments to stock naloxone so that patients treated in the emergency department can be dispensed naloxone before being discharged in situations when the outpatient pharmacy is closed.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure patients have access to a lifesaving drug even if the outpatient pharmacy is closed.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 217.186 requires the Board of Pharmacy to promulgate administrative regulations governing dispensing of naloxone by a pharmacist. KRS 315.191(1)(a) authorizes the board to promulgate regulations.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will further promote, preserve, and protect public health by ensuring that patients discharged from the emergency department when outpatient pharmacies are closed are provided with take-home naloxone to possibly prevent a future overdose.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates pharmacists, individual persons, and agencies will be minimally impacted by this regulation amendment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Pharmacists, individual persons, and agencies will have to familiarize themselves with the amended language.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no expected costs for the entities identified to comply with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will provide

ensure that pharmacists can best serve their patients that need access to naloxone to prevent a potential overdose.

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

(a) Initially: No costs will be incurred.

(b) On a continuing basis: No costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Board revenues from pre-existing fees provide the funding to enforce the regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation is applicable to all pharmacists, individual persons, and agencies which seek to dispense naloxone as part of a harm reduction program.

#### 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? Pharmacies and private and public agencies will be impacted by this administrative regulation amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 217.186, KRS 315.191(1)(a).

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

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

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

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

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

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

Revenues (+/-): 0

Expenditures (+/-): 0

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 from 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 for this administrative regulation in subsequent years.

(c) How much will it cost the regulated entities for the first year? There is no cost.

(d) How much will it cost the regulated entities for subsequent years? There is no 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.

Cost Savings (+/-): 0

Expenditures (+/-): 0

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 administrative regulation will not have a major economic impact.

#### TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

##### 301 KAR 2:075. Wildlife rehabilitation permit.

RELATES TO: KRS 150.010, 150.015, 150.021, 150.170, 150.183, 150.195, 150.330, 150.990, 321.185, 50 C.F.R 17, 21, 22  
STATUTORY AUTHORITY: KRS 150.025(1)(h), 150.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)(h) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations reasonably necessary to implement or carry out the purposes of KRS Chapter 150. KRS 150.280 requires the department to promulgate administrative regulations regarding the holding of protected wildlife. This administrative regulation establishes the permitting and operating requirements for wildlife rehabilitators.

##### 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.

(4) [(2)] "Enhanced Rabies Surveillance Zone~~[area]~~" means Bell, Boyd, Bracken, Carter, Clay, Elliot, Fleming, Floyd, Greenup, Harlan, Johnson, Knott, Knox, Laurel, Lawrence, Leslie, Letcher, Lewis, Martin, Mason, McCreary, Pike, Pery, Robertson, and Whitley counties.

(5) "Federally-protected wildlife" means any wildlife species listed by the U.S. Fish and Wildlife Service as threatened or endangered, and any birds protected under the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act.

(6) [(3)] "Permit holder" means a wildlife rehabilitation permit holder.

(7) [(4)] "Rabies vector species" means a:

(a) Coyote (*Canis latrans*);

(b) Gray fox (*Urocyon cinereoargenteus*);

(c) Raccoon (*Procyon lotor*);

(d) Red fox (*Vulpes vulpes*);

(e) Spotted skunk (*Spilogale putorius*); or

(f) Striped skunk (*Mephitis mephitis*);

(g) Any hybrid of (a) through (f).

(8) [(5)] "Wildlife rehabilitation" means the process of obtaining, rescuing, raising, providing supportive care, regularly transporting, and arranging for veterinary medical care of orphaned, sick, displaced, or injured wildlife with the goal of releasing the wildlife back into its natural habitat.

##### Section 2. Permitting Requirements~~[Wildlife Rehabilitation Permits]~~.

(1) A permit authorizes a person to rehabilitate wildlife according to Section 1(8) of this administrative regulation.

(2) An applicant for a wildlife rehabilitation permit shall:

(a) Be at least eighteen (18) years of age;

(b) Submit a completed wildlife rehabilitation permit[Complete an] application;

(c) Provide the department with a valid email address;[Submit the application to the Director of Wildlife at #1 Sportsman's Lane, Frankfort, Kentucky 40601;]

(d) Submit;

1. Certificate of completion of[proof of successful completion of] the course entitled "Basic Wildlife Rehabilitation" offered by the International Wildlife Rehabilitation Council; or[and]

2. Proof of a doctorate of veterinary medicine degree from an American Veterinary Medical Association (AVMA) accredited school.

(e) Submit the annual permit fee as established in 301 KAR 3:022.

[(2) An applicant:

(a) May obtain a course-pending status for up to one (1) year upon the issuance of the initial permit; and

(b) Shall submit proof of course completion to the department before the permit shall be renewed.

(3) An applicant's or permit holder's facility shall be inspected by a conservation officer to document compliance with Section 4 of this administrative regulation before a permit is obtained or renewed.

(4) A permit shall be revoked and wildlife confiscated if:

(a) An applicant falsifies information on the application;

(b) The permit holder fails to comply with the provisions of this administrative regulation; or

(c) The permit holder is convicted of a violation of KRS Chapter 150.

(5) An individual whose request for a permit has been denied or whose status has been revoked or suspended may request an administrative hearing pursuant to KRS Chapter 13B-]

### Section 3. Reporting Requirements.

(1) A permit holder shall:

(a) Keep records of all wildlife received or rehabilitated on the Wildlife Rehabilitation Annual Report.

(b) Submit a Wildlife Rehabilitation Annual Report to the department within thirty (30) days after expiration of a permit and before a permit is renewed.

(c) Submit a Wildlife Rehabilitation Non-Releasable Wildlife Report, if applicable, to the Department within thirty (30) days after expiration of a permit and before a permit is renewed.

(2) The annual activity report shall contain the information regarding the activity for the period from December 1 of the previous year to November 30 of the current year.

(3) The department shall not renew the permit of a wildlife rehabilitator who does not:

(a) Submit the annual activity report as required by this section;

(b) Provide the information required by the annual activity report form; or[-]

(c) Submit the Non-Releasable Wildlife Report, if applicable;

(d) Provide report documents and all records of wildlife rehabilitation activity, including veterinary medical records, from the current and previous years' activity upon request to department staff.

[(1) A permit holder shall:

(a) Only keep wildlife in a rehabilitation facility for a maximum of 180 days unless specifically exempted by the U.S. Fish and Wildlife Service; and

(b) Submit to the department a completed Kentucky Department of Fish and Wildlife Resources Wildlife Rehabilitation Annual Report Form.

(2) If an animal is not releasable, as established in subsection (4) of this section, and is held for educational purposes, then the annual report shall document each educational program's:

(a) Date;

(b) Time; and

(c) Location.

(3) A permit holder shall not simultaneously hold captive wildlife under the auspices of a captive wildlife permit as established in 301 KAR 2:081 or 301 KAR 2:083.

(4) A permit holder may retain wildlife for educational purposes if the animal:

(a) Is a mammal with an amputated leg;

(b) Lacks adequate vision to function in the wild;

(c) Lacks locomotive skills necessary for survival in the wild; or

(d) Has another permanent injury that is reasonably expected to inhibit survival in the wild.

(5) An animal retained for educational purposes pursuant to subsection (4) of this section shall be exhibited in an educational program a minimum of six (6) times per year.

(6) Except as established in 50 C.F.R. 17 and 21, a permit holder shall not propagate threatened and endangered wildlife.

(7) A permit holder shall immediately notify the department, in writing, of any federally-threatened or endangered wildlife species delivered, recovered, or retained for rehabilitation.

(8) A permit holder shall not rehabilitate or attempt to rehabilitate any species of terrestrial wildlife not native to Kentucky.

(9) A permit holder shall not rehabilitate or attempt to rehabilitate a:

(a) Cougar (Felis concolor);

(b) Wolf (Canis lupus or Canis rufus);

(c) Elk (Cervus elaphus); or

(d) Bear (Ursus americanus).

(10) A permit holder shall not transport wildlife across state lines for rehabilitation, release, or for any other purpose, unless authorized by the commissioner.

(11) A permit holder shall release rehabilitated wildlife into the appropriate habitat for that species.

(12) A permit holder shall obtain landowner permission before releasing rehabilitated wildlife.

(13) A permit holder shall not keep a cervid in a rehabilitation facility for more than 180 days.

(14) A wild-born cervid held in captivity for rehabilitation purposes shall not be housed in:

(a) The same pen as another captive cervid or housed in direct physical contact with a cervid that originated in captivity; or

(b) A pen that has previously housed cervids that originated in captivity.

(15) A permit holder shall not simultaneously hold a captive cervid permit.

(16) A licensed wildlife rehabilitator shall not:

(a) Accept, obtain, or possess a rabies vector species originating from the enhanced rabies surveillance area; or

(b) Transport a rehabilitated rabies vector species into or out of the enhanced rabies surveillance area.

### Section 4. Receiving and Rehabilitating Wildlife.

(1) A permit holder shall not rehabilitate or attempt to rehabilitate:

(a) Cougar (Felis concolor);

(b) Wolf (Canis lupus or Canis rufus);

(c) Elk (Cervus elaphus);

(d) Bear (Ursus americanus);

(e) Any species of terrestrial wildlife not native to Kentucky; or

(f) Prohibited species listed in 301 KAR 2:082 Section 4.

(2) A permit holder shall not:

(a) Propagate non-releasable wildlife or wildlife undergoing rehabilitation.

(b) Allow non-permitted persons to rehabilitate, assist in wildlife rehabilitation, access, or have direct contact with wildlife undergoing rehabilitation, except for Section 10(1).

(c) Allow non-permitted persons to rehabilitate, assist in wildlife rehabilitation, access, or have direct contact with rabies vector species.

(d) Remove wildlife undergoing rehabilitation from the permitted facility except for release, veterinary care, or transfer to another permitted wildlife rehabilitation facility.

(e) Habituate wildlife to humans.

(f) Exhibit or display wildlife undergoing rehabilitation.

(g) Transport wildlife across state lines for rehabilitation, release, or for any purpose, unless authorized by the commissioner upon the department's determination that rehabilitation services are not feasibly available within Kentucky and such activities pose minimal disease risk. Authorization shall not be granted for rabies vector species.

(h) Simultaneously hold captive wildlife under a captive wildlife

permit, as established in 301 KAR 2:081, while holding wildlife under a wildlife rehabilitation permit.

(i) Simultaneously hold captive cervids under a captive cervid permit as established in 301 KAR 2:083, while holding wildlife under a wildlife rehabilitation permit.

(3) A permit holder shall only provide necessary supportive care to wildlife undergoing rehabilitation, which does not permanently diminish their ability to survive and reproduce naturally in the wild.

(4) Cervids

(a) Except as allowed in subsection (4)(c) and (d) of this section, a permit holder shall not rehabilitate or attempt to rehabilitate any cervid:

1. Within a CWD Surveillance Zone;

2. Originating from a CWD Surveillance Zone; or

3. From a distance greater than 100 miles from the rehabilitation facility.

(b) A permit holder shall not transport a cervid into or out of a CWD Surveillance Zone.

(c) A permit holder shall not keep cervids as non-releasable wildlife within a CWD Surveillance Zone, except that non-releasable cervids legally obtained before the establishment of a CWD Surveillance Zone may be kept for the life of the animal.

(d) A permit holder in possession of a cervid prior to the establishment of a CWD Surveillance Zone shall only keep the cervid up to 180 days or upon recovery from injury or illness and of suitable age to survive in the wild, whichever comes first, and shall release the cervid within the county of rehabilitation, unless the animal is euthanized or meets the criteria to be kept as non-releasable wildlife.

(e) A wild-born cervid held in captivity for rehabilitation purposes shall not be housed in:

1. The same pen as another captive cervid or housed in direct physical contact with a cervid that originated in captivity; or

2. A pen that has previously housed cervids that originated in captivity.

(5) Rabies vector species.

(a) A permit holder shall not possess, rehabilitate, or attempt to rehabilitate:

1. A rabies vector species originating from the Enhanced Rabies Surveillance Zone;

2. A rabies vector species inside the Enhanced Rabies Surveillance Zone that originated from outside the Enhanced Rabies Surveillance Zone; or

3. A rabies vector species if collected at a distance greater than 100 miles from the rehabilitation facility.

(b) A permit holder shall not transport a rabies vector species into or out of the Enhanced Rabies Surveillance Zone.

(c) A permit holder shall not possess a rabies vector species as non-releasable wildlife, except for those animals legally held outside the Enhanced Rabies Surveillance Zone prior to April 4, 2023.

(d) Except for Section 5(1)(e), rabies vector species shall be maintained within an enclosure sufficient to prevent:

1. Escape; and

2. Direct contact with non-permitted persons.

[Section 4. Facilities and Operating Standards. (1) A facility shall comply with Minimum Standards for Wildlife Rehabilitation as adopted by the National Wildlife Rehabilitators Association and the International Wildlife Rehabilitation Council.

(2) A permit holder shall allow a conservation officer to inspect the facilities at any reasonable time.

(3) The conservation officer shall immediately notify the permit holder and the commissioner if the inspection reveals that the facility is not in compliance with this administrative regulation.

(4) The conservation officer shall make a second inspection after ten (10) days, and the permit shall be revoked and all captive wildlife confiscated immediately if the unsatisfactory conditions have not been corrected.]

Section 5. Wildlife Release. A permit holder shall:

(1) Release wildlife immediately upon recovery from injury or illness and when of a suitable age to reasonably survive in the wild;

(2) Only keep wildlife in a rehabilitation facility for a maximum

of 180 days, unless written documentation from the U.S. Fish and Wildlife Service is provided;

(3) Only release wildlife into appropriate habitat for that species;

(4) Obtain landowner permission before releasing wildlife;

(5) Release rabies vector species back into the original county of capture;

(6) Release reptiles and amphibians at the original point of capture or within the vicinity if point of capture is not suitable habitat; and

(7) Release cervids in the county in which they were rehabilitated.

[Section 5. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) The National Wildlife Rehabilitators Association and the International Wildlife Rehabilitation Council publication "Minimum Standards for Wildlife Rehabilitation", third edition, 2000;

(b) "Kentucky Department of Fish and Wildlife Resources Wildlife Rehabilitation Annual Report Form", 2002 edition; and

(c) "Application for Wildlife Rehabilitation Permit", 2006 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. until 4:30 p.m.]

Section 6. Non-releasable Wildlife.

(1) Wildlife may be considered non-releasable and may be retained by a permit holder if a licensed Kentucky veterinarian certifies in writing that it meets one (1) of the following criteria, except as prohibited under Section 4.

(a) Is a mammal with an amputated leg;

(b) Lacks adequate vision to function in the wild;

(c) Lacks locomotive skills necessary for survival in the wild; or

(d) Has another permanent injury that is reasonably expected to inhibit survival in the wild, not including habituation to humans.

(2) Rabies vector species that meet the criteria for non-releasable wildlife and legally held prior to April 4, 2023 may be allowed to remain in possession of a valid permit holder through the life of the animal by submitting a "Wildlife Rehabilitation Non-Releasable Wildlife Report" form by April 4, 2023.

(3) Rabies vector species legally held as non-releasable, shall not leave the wildlife rehabilitation facility except for veterinary care or transfer to another permitted rehabilitation facility and shall be included on the Wildlife Rehabilitation Annual Report.

(4) A person who legally possesses non-releasable rabies vector species shall not replace that wildlife after its death.

(5) Except for Section 5(1)(e), non-releasable rabies vector species shall be maintained within an enclosure sufficient to prevent:

(a) Escape; and

(b) Direct contact with non-permitted persons.

(6) Only non-releasable wildlife may be displayed, except that non-releasable rabies vector species shall not be displayed. Such displays shall only be for conservation education purposes.

(7) Non-releasable migratory birds may be transferred with prior approval from the issuing federal Migratory Bird Permit Office by providing the Department with a completed Migratory Bird and Eagle Acquisition and Transfer Request Form.

(8) All non-releasable wildlife shall be housed and maintained at a permitted wildlife rehabilitation facility.

Section 7. Facilities and Operating Standards.

(1) All wildlife rehabilitation facilities shall pass a facility inspection.

(2) An applicant's or permit holder's facility and property which the facility is located shall be inspected by a conservation officer using a Wildlife Rehabilitation Facility Inspection Checklist to document compliance with this administrative regulation before a permit is obtained or renewed.

(3) A permit holder shall allow any conservation officer, and all department staff accompanying a conservation officer, to access the wildlife rehabilitation facility and the property on which the wildlife rehabilitation facility is located at any reasonable time and frequency to carry out the purposes of this administrative

regulation.

(4) A facility, and all methods of confinement, shall comply with the Minimum Standards for Wildlife Rehabilitation, as adopted by the National Wildlife Rehabilitation Association and the International Wildlife Rehabilitation Council.

(5) A permit holder shall only rehabilitate wildlife at a facility that has passed an annual facility inspection and shall list the addresses of all facilities on the Wildlife Rehabilitation Permit Application.

(6) A permit holder shall allow a conservation officer to inspect the holding facilities and property which the facilities are located, at any reasonable time and frequency.

(7) The conservation officer shall immediately notify the applicant or permit holder and the wildlife division director if the inspection reveals that the facility is not in compliance with this administrative regulation and shall provide a completed facility inspection checklist to the appropriate Wildlife Division personnel within three (3) business days.

(8) If an inspection determines that a facility is not in compliance with a statute or administrative regulation, the conservation officer shall make a second inspection after ten (10) calendar days, and the permit application shall be denied, or permit revoked and all wildlife confiscated immediately if the unsatisfactory conditions have not been corrected.

(9) If an applicant or permit holder refuses to allow a conservation officer to fully conduct an inspection, the permit application shall be denied, or permit revoked and all wildlife confiscated immediately. [Failure to allow a conservation officer to conduct an initial inspection shall be deemed a violation subjecting the permit to denial or revocation proceedings.]

#### Section 8. Rabies Exposure.

(1) If a mammal bites a person, or a mammal shows symptoms of a rabies infection, the animal shall be dispatched in a manner so as to preserve the brain intact and the animal's head shall be submitted for testing immediately to a laboratory approved by the Secretary for Health and Family Services to be tested for rabies, as established in 902 KAR 2:070 Section 5 and KRS 258.085 Section 1(c).

(2) Department staff shall confiscate and dispatch any wild mammal that bites a person or shows symptoms of a rabies infection.

#### Section 9. Veterinarians.

(1) A veterinarian is not required to obtain a wildlife rehabilitation permit to temporarily possess, stabilize, or euthanize sick and injured wildlife, only for the purpose of providing immediate critical care.

(2) A veterinarian that does not possess a valid wildlife rehabilitation permit shall transfer wildlife to a permitted wildlife rehabilitator according to the requirements of this regulation, within 24 hours after the animal's condition is stabilized and no longer requires critical care, unless wildlife is euthanized.

(3) A veterinarian that rehabilitates wildlife shall possess a valid wildlife rehabilitation permit.

(4) A permit holder shall follow veterinarian's medical instructions per KRS 321.185.

(5) A veterinarian shall keep medical records of all wildlife treated, in accordance with KRS Chapter 321 and 201 KAR Chapter 16 and provide records to Department staff upon request.

(6) Only a licensed veterinarian or licensed veterinarian technician shall perform euthanasia using AVMA approved non-inhaled chemical methods under KRS Chapter 321.

#### Section 10. Wildlife Possession.

(1) Any person who finds sick, injured, displaced, or orphaned wildlife may, without a permit, except for federally protected migratory birds within a nest per 50 C.F.R. 21.12 (d) (10), take possession of the animal in order to immediately transport it to a permitted wildlife rehabilitator except that persons who regularly transport wildlife for rehabilitation purposes shall possess a valid wildlife rehabilitation permit.

(2) A wildlife rehabilitation permit does not confer ownership of any wildlife species

held under a wildlife rehabilitation permit, including non-releasable wildlife.

(3) All wildlife held under this permit remain under the stewardship of the Department of Fish and Wildlife Resources, except that federally-protected wildlife remain under the stewardship of both the Department of Fish and Wildlife and the U.S. Fish and Wildlife Service.

(4) Wildlife shall be surrendered to the department, for processing and disposition pursuant to regulation, upon being presented with a written order by the commissioner.

Section 11. Federally-Protected Species. A person rehabilitating federally protected species shall possess valid state and federal wildlife rehabilitation permits, except that a person may be authorized as a sub-permittee on a federal migratory bird rehabilitation permit, under a federal permit holder, per 50 C.F.R. 21.31.

(1) Sub-permitted persons conducting wildlife rehabilitation activities shall possess a valid state wildlife rehabilitation permit.

(2) A permit holder shall immediately notify the department in writing or by email to fwpermits@ky.gov, of any federally threatened or endangered wildlife species, delivered, received, recovered, or retained for rehabilitation.

(3) A general or master class falconry permit holder may condition raptors for subsequent release into the wild for a permitted wildlife rehabilitator, as established in 301 KAR 2:195, only for the species the falconry permit holder is allowed to possess.

(4) Falconers that rehabilitate wildlife, except for conditioning raptors per this section, shall possess a valid wildlife rehabilitation permit.

#### Section 12. Revocation and Denial of Permits and Appeal Procedure.

##### (1) Denial and revocation.

(a) The department shall revoke the permit, deny the issuance of a new permit, or deny a renewal of an existing or lapsed permit, and confiscate wildlife of a person who is convicted of a violation of any provisions of:

1. KRS Chapter 150;

2. 301 KAR Chapters 1 through 5; or

3. Any federal statute or regulation related to hunting, fishing, or wildlife.

(b) The department shall revoke the permit, deny the issuance of a new permit, or deny a renewal of an existing or lapsed permit, and confiscate wildlife from a person who:

1. Provides false information on a wildlife rehabilitation permit application, federal permit, annual report, Non-Releasable Wildlife Report, facility inspection, or records.

2. Acquires wildlife prior to receiving an approved wildlife rehabilitation permit.

3. Fails a facility inspection, as established in Section 7; or

4. Fails to comply with any provision of this regulation, 301 KAR 3:120, 301 KAR 2:081, 301 KAR 2:082, 301 KAR 2:083, 301 KAR 2:195, or 301 KAR 2:251.

5. Allows non-permitted persons to rehabilitate, assist in wildlife rehabilitation, access, or have direct contact with wildlife undergoing rehabilitation or non-releasable rabies vector species.

6. Fails to contain wildlife in enclosures that meet Minimum Standards for Wildlife Rehabilitation except during treatment, release, or transfer per Section 6 of this administrative regulation;

7. Keeps wildlife over 180 days;

8. Accepts rabies vector species within the enhanced Rabies Surveillance Zone.

9. Accepts rabies vector species that originated from the Enhanced Rabies Surveillance Zone.

10. Transports rabies vector species into or out of the Enhanced Rabies Surveillance Zone

11. Fails to possess a valid federal permit or be listed as a sub-permittee on a federal permit to rehabilitate federally protected wildlife.

12. Accepts cervids within a CWD Surveillance Zone.

13. Accepts cervids that originated within a CWD Surveillance Zone.



14. Transports cervids into or out of a CWD Surveillance Zone.

(c) A fee shall not be refunded for a permit that is revoked.

(2) Confiscated wildlife.

(a) All wildlife shall be confiscated if a wildlife rehabilitation permit is revoked or denied, a person possesses native wildlife for the purpose of wildlife rehabilitation without a valid wildlife rehabilitation permit, or a facility fails a facility inspection per Section 7 of this administrative regulation.

(b) Confiscated wildlife shall be released, transferred with the approval of the Wildlife Division Director, or dispatched, except that rabies vector species shall be dispatched immediately.

(c) Wildlife shall not be returned to the permit holder or facility from which they were confiscated.

(3) Denial period.

(a) An applicant whose permit has been revoked or denied for the grounds established in this section shall be ineligible to reapply, and all applications denied for the period established below:

1. The initial denial period shall be one (1) year;

2. A second denial period shall be three (3) years;

3. A third or subsequent denial period shall be five (5) years;

(b) During the denial period, a person whose wildlife rehabilitation permit has been denied or revoked shall not rehabilitate wildlife or assist in the rehabilitation of wildlife.

(4) Administrative hearings.

(a) An individual whose permit has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.

(b) A request for a hearing shall be in writing and postmarked or delivered in person to the department no later than thirty (30) days after notification of the denial or the revocation.

(c) Upon receipt of the request for a hearing, the department shall proceed according to the provisions of KRS Chapter 13B.

(d) The hearing officer's recommended order shall be considered by the commissioner and the commissioner shall issue a final order, pursuant to KRS Chapter 13B.

Section 13. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) The National Wildlife Rehabilitator's Association and the International Wildlife Rehabilitation Council publication "Minimum Standards for Wildlife Rehabilitation", third edition, 2000;

(b) Kentucky Department of Fish and Wildlife Resources "Wildlife Rehabilitation Annual Report", 2022 edition, <https://fw.ky.gov/Wildlife/Documents/rehabannreport.pdf>; and

(c) "Wildlife Rehabilitation Permit Application", 2022 edition, <https://fw.ky.gov/Wildlife/Documents/rehabapp.pdf>.

(d) "Wildlife Rehabilitation Non-Releasable Wildlife Report", [https://fw.ky.gov/Documents/NON\\_RELEASABLE\\_WILDLIFE\\_REPORT.pdf](https://fw.ky.gov/Documents/NON_RELEASABLE_WILDLIFE_REPORT.pdf)

(e) "Wildlife Rehabilitation Facility Inspection Checklist", <https://fw.ky.gov/Wildlife/Documents/RehabLEInspectionChecklist.pdf>

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. until 4:30 p.m.

RICH STORM, Commissioner

APPROVED BY AGENCY: September 15, 2022

FILED WITH LRC: September 15, 2022 at 11:45 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 29, 2022, at 1:00 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 November 30, 2022. Send written notification of intent to

be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, (502) 564-3400, fax: (502) 564-0506, email: [fwpubliccomments@ky.gov](mailto: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 the requirements for persons rehabilitating wildlife in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide reasonable standards for those who rehabilitate wildlife in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1)(h) authorizes the department to promulgate administrative regulations reasonably necessary to implement or carry out the purposes of KRS Chapter 150. KRS 150.280 authorizes the department to promulgate administrative regulations regarding holding protected wildlife.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing the minimum requirements for wildlife rehabilitators 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: These amendments will define the Chronic Wasting Disease (CWD) Zone and prohibit cervids from being rehabilitated when obtained within the zone. This amendment will also protect public health by placing added restrictions on the handling of rabies vector species, prevent the spread of wildlife diseases by limiting movement across the state, and improve care to wildlife by requiring training before a permit is issued.

(b) The necessity of the amendment to this administrative regulation: CWD was detected in Tennessee, 8 miles from the Kentucky border in 2021. These amendments will further reduce the opportunity for the disease to enter the Commonwealth by placing added restrictions on the handling and transportation of those animals defined as cervids.

(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: Kentucky permitted wildlife rehabilitators will be affected by this administrative regulation. Currently there are 96 wildlife rehabilitators in the state.

(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: Wildlife rehabilitators will no longer be able to rehabilitate cervids obtained within the Chronic Wasting Disease Surveillance Zone. Additionally, cervids will be prohibited from being transported into or out of the Chronic Wasting Disease Surveillance Zone. Rabies vector species can no longer be kept as permanent non-releasable animals. No public contact will be allowed with animals undergoing rehabilitation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No additional benefits will accrue to individual wildlife rehabilitators.

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

(a) Initially: No additional costs will be incurred for implementation initially.

(b) On a continuing basis: No additional costs will be incurred for implementation 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: No increase of 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 nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? All permit holders are subject to 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)(h) and 150.280.

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs incurred for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(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 first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no cost savings for subsequent years.

(c) How much will it cost the regulated entities for the first year? There will be no additional costs incurred the first year.

(d) How much will it cost the regulated entities for subsequent years? There will be no additional costs incurred for subsequent years.

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

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 will be no major economic impact.

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 50 C.F.R. 17, 21, and 22.

(2) State compliance standards. KRS 150.025(1)(h), 150.280. KRS 150.025(1)(h) authorizes the department to promulgate administrative regulations reasonably necessary to implement or carry out the purposes of KRS Chapter 150. KRS 150.280 requires the department to promulgate administrative regulations regarding the holding of protected wildlife.

(3) Minimum or uniform standards contained in the federal mandate. 50 C.F.R. 17 establishes the federal standards for threatened and endangered wildlife. 50 C.F.R. 21 establishes the federal standards for migratory birds. 50 C.F.R. 22 establishes the federal standards for bald and golden eagles as the Bald and Golden Eagle Act.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, changes to this administrative regulation were made to align with the federal statutes and regulations.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. See (4).

#### TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

##### 301 KAR 2:081. Transportation and holding of live native wildlife.

RELATES TO: KRS 150.010, 150.015, [150.290, 150.305, 150.320, 150.330, 150.360, 150.370, 150.990, 150.183, 150.190, 150.195, 150.235, 258.065, 258.085]

STATUTORY AUTHORITY: KRS 65.877, 150.025(1)[(e)], 150.105, 150.180, 150.280, 50 C.F.R. 21.29

NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.877 authorizes local governments to regulate or prohibit inherently dangerous wildlife as identified by the Department of Fish and Wildlife Resources and requires the department to establish procedures for denying or issuing a transportation permit. KRS 150.025(1)[(e)] authorizes the department to promulgate administrative regulations for the buying, selling, or transporting of wildlife. KRS 150.105 authorizes the department to dispatch or bring under control any wildlife causing damage to persons, property or other animals spreading disease and which should be eliminated to prevent further damage. KRS 150.180 authorizes the department to regulate the buying, selling, or transporting of protected wildlife. KRS 150.280 requires the department to promulgate administrative regulations to establish the procedures for the propagation and holding of protected wildlife. 50 C.F.R. 21.29 establishes the federal standards for holding raptors for falconry purposes. This administrative regulation establishes requirements for the buying, selling, holding, and transportation of live native wildlife.

##### Section 1. Definitions.

(1) "Enhanced Rabies Surveillance Zone[area]" means Bell, Boyd, Bracken, Carter, Clay, Elliot, Fleming, Floyd, Greenup, Harlan, Johnson, Knott, Knox, Laurel, Lawrence, Leslie, Letcher, Lewis, Martin, Mason, McCreary, Pike, Perry, Robertson, and Whitley counties.

(2) "Native wildlife" means wildlife species that have historically existed or currently exist in the wild in Kentucky without

introduction by humans or have naturally expanded their range into Kentucky without introduction by humans.~~[man, except for introduced species which have become naturalized.]~~

- (3) "Rabies vector species" means a:
- (a) Coyote (*Canis latrans*);
  - (b) Gray fox (*Urocyon cinereoargenteus*);
  - (c) Raccoon (*Procyon lotor*);
  - (d) Red fox (*Vulpes vulpes*);
  - (e) Spotted skunk (*Spilogale putorius*);~~[-or]~~
  - (f) Striped skunk (*Mephitis mephitis*);or
  - (g) Any hybrid of (a) through (f).

## Section 2. Taking and Possessing Native Wildlife.

(1) A person shall not possess native wildlife that was not legally acquired.

(2) For native wildlife obtained from the wild, a person shall not participate in any of the activities established in paragraphs (a) through (e) of this subsection~~[with native wildlife obtained from the wild]:~~

- (a) Buy;
- (b) Sell;
- (c) Offer to buy;
- (d) Offer to sell; or
- (e) Trade or barter.

(3) Except as established in Sections 5(5) and~~[Section]~~ 7(1) of this administrative regulation and subsections (4), ~~[and]~~ (5), (6), and (9) of this section, a person holding native wildlife in captivity shall apply for and obtain the appropriate permit prior to acquiring wildlife.

(4) Northern bobwhite.

(a) A person may possess 100 or fewer northern bobwhite without a captive wildlife permit, if the:

- 1. Birds are not propagated or sold; and
- 2. He retains and possesses a receipt or proof of purchase.

(b) A person possessing northern bobwhite for dog training areas, shooting areas, or a shoot-to-train season shall comply with all applicable requirements of 301 KAR 2:041.

(c) Any confining facility shall comply with Sections 8, 9, 10, and 11 of this administrative regulation.

(5) Amphibians and reptiles.

(a) Five (5) or fewer individuals of each species of native reptile or amphibian may be taken year round or possessed for personal use without a permit, except there shall be:

1. No limit on common snapping or softshell turtles, as established in 301 KAR 1:058;

2. A limit of fifteen (15) bullfrogs per night, during the bullfrog season, as established in 301 KAR 1:082; and

3. A limit of twenty-five (25) dusky salamanders ~~[or spring lizards]~~ of the genus Desmognathus, as established in 301 KAR 1:130.

(b) There shall be no limit on the number of individuals of each species possessed by a commercial or noncommercial captive wildlife permit holder, if the permit holder does not possess more than five (5) wild-caught individuals of each species of amphibian or reptile.

(c) A captive wildlife permit shall not be required to hold reptiles with a color morphology that is distinctly different from the wild type of the same species of reptile.

(6) A person with a valid falconry permit, as established in 301 KAR 2:195, shall not be required to possess a noncommercial captive wildlife permit or transportation permit for those raptors held under the falconry permit.

(7) A rabies vector species that is trapped in accordance with 301 KAR 2:251~~[within the enhanced rabies surveillance area]~~ shall be dispatched~~[euthanized]~~ before being moved, unless immediately released at capture site, except that foxes and coyotes trapped during the trapping season, as established in~~[pursuant to]~~ 301 KAR 2:251, may be;

(a) Held for up to forty-eight (48) hours with a valid captive wildlife permit only for the purpose of being transferred to a permitted commercial foxhound training enclosure; and

(b) Transferred to a permitted commercial foxhound training enclosure if the enclosure is located within the county of capture.

~~[(7) A fox or coyote trapped within the enhanced rabies~~

~~surveillance area during the trapping season may be held for up to forty-eight (48) hours with a valid captive wildlife permit before being transferred to a permitted commercial foxhound training enclosure.]~~

(8) A person shall not transport a living rabies vector species into or out of the Enhanced Rabies Surveillance Zone~~[area]~~.

(9) Except for foxes and coyotes, a captive wildlife permit is not required for captive-bred native wildlife legally imported or held in a temporary facility for ten (10) days or less.

(10) A permit holder shall report all bites and exposure events, as established in KRS 258.065, to the local county health department within twelve (12) hours.

(11) If a native mammal in a permit holder's possession bites a person, or a mammal shows symptoms of a rabies infection, the animal shall be dispatched immediately, as established in KRS 258.085 Section 1(c), and the permit holder shall submit its head for testing immediately to a laboratory approved by the Secretary for Health and Family Services to be tested for rabies, as established in 902 KAR 2:070 Section 5.

(12) Department staff shall confiscate and dispatch any wild mammal that bites a person or shows symptoms of a rabies infection that is not otherwise immediately dispatched pursuant to subsection (11) of this section.

## Section 3. Captive Wildlife Permits and Record Keeping.

(1) Commercial captive wildlife permit.

(a) A commercial captive wildlife permit shall be required for a person to:

- 1. Sell;
- 2. Offer to sell;
- 3. Trade;~~[-or]~~
- 4. Barter;or~~[native wildlife.]~~
- 5. Profit in any way from captive native wildlife, except as

authorized by Section 2(9) of this administrative regulation.

(b) A commercial captive wildlife permit shall be renewable annually from the date of issue.

(c) A commercial captive wildlife permit shall be valid for one (1) specific captive wildlife facility.

(2) Noncommercial captive wildlife permit.

(a) A noncommercial captive wildlife permit shall be required for a person possessing native wildlife, but not selling, offering to sell, trading, ~~[or]~~ bartering, or profiting in any way from captive native wildlife~~[animals]~~.

(b) A noncommercial captive wildlife permit shall be renewable three (3) years from the date of issue.

(c) A noncommercial captive wildlife permit shall be valid for one (1) specific captive wildlife facility.

(3) A captive wildlife permit holder shall maintain accurate records for all captive-bred and wild-captured wildlife and include the information established in paragraphs (a) and (b) of this subsection.

(a) For each captive-bred animal, a person shall:

- 1. Record the common and scientific name;
- 2. Keep evidence of legal acquisition, which shall be a:
  - a. Bill of sale;
  - b. Receipted invoice; or
  - c. Certificate of origin;
- 3. Record and maintain each animal's date of birth;
- 4. Record and maintain each transaction date related to:
  - a. Sale;
  - b. Purchase;
  - c. Trade;
  - d. Barter; or
  - e. Gifting; and
- 5. Record and maintain information of the person either receiving or transferring captive wildlife, which shall include the person's:
  - a. Name;
  - b. Address;
  - c. Phone number; and
  - d. Captive wildlife permit number.

(b) For each wild-captured animal, a person shall record and maintain the:

- 1. Common and scientific name;

2. Date of capture or date when received;
3. Location of capture;
4. Trapping license or hunting license number, if applicable, of the individual obtaining the wildlife; and
5. Information of the person to whom the animal was given or received, which shall include the person's:
  - a. Name;
  - b. Address;
  - c. Phone number; and
  - d. Captive wildlife permit number.
- (4) A captive wildlife permit holder shall:
  - (a) Maintain all records for five (5) years; and
  - (b) Allow records to be inspected by a department representative upon request.

Section 4. Transportation Permits and Certificates of Veterinary Inspection. (1) A person shall apply for and obtain a valid transportation permit or permit authorization number from the department for all shipments of native wildlife, ~~[native or exotic,~~ unless otherwise exempted by this or another administrative regulation, prior to:

- (a) Receiving a shipment of native wildlife from outside of Kentucky;
- (b) Importing native wildlife into Kentucky; or
- (c) Transporting native wildlife into and through the state to a destination outside Kentucky.
- (2) A copy of a valid transportation permit or permit authorization number shall accompany all shipments of native wildlife into and through Kentucky.
- (3) An individual transportation permit shall be valid for one (1) shipment of native wildlife.
- (4) An annual transportation permit shall be valid for multiple wildlife shipments for one (1) year from the date of issue.
- (5) All shipments of wildlife, except for amphibians and reptiles, shall be accompanied by a:
  - (a) [A-]Certificate of veterinary inspection stating that the wildlife is free from symptoms of disease; or
  - (b) [A-]Federal quarantine certificate.

#### Section 5. Applying for Permits.

- (1) A permit authorizes a person to hold native wildlife according to this administrative regulation.
- (2) An applicant for a captive wildlife or transportation permit shall:
  - (a) Submit a completed permit application;
  - (b) Provide the department with a valid email address;
  - (c) Submit the annual permit fee as established in 301 KAR 3:022, except for government agencies that meet the requirements in subsection (12) of this section; and
  - (d) Be at least eighteen (18) years of age.
- (3) For a commercial or noncommercial captive wildlife permit, an applicant shall submit a completed "Captive Wildlife Permit Application";
- (4) For an individual transportation permit, an applicant shall submit a completed "Individual Transportation Permit Application"; or
- (5) For an annual transportation permit, an applicant shall submit a completed "Annual Transportation Permit Application." ~~[A person shall complete an application for a captive wildlife permit or a transportation permit on a form supplied by the Department.]~~

- (6) [(2)] An applicant for a captive wildlife permit shall only obtain wildlife from one (1) of the legal sources established in paragraphs (a) through (d) of this subsection.
  - (a) A legal purchase or transfer of captive-bred animals from a commercial captive wildlife permit holder;
  - (b) A gift from a commercial or noncommercial captive wildlife permit holder;
  - (c) Wildlife trapped by the applicant during a legal season for the species with a valid trapping license, if applicable; or
  - (d) A legal out-of-state source if the applicant provides a valid transportation permit.

[(7)] [(3)] Following permit issuance, the permit holder shall retain records as established in Section 3(3) and (4) of this administrative regulation.

[(8)] [(4)] An applicant shall construct holding facilities that meet or exceed the enclosure specifications established in Sections 8 and 9 of this administrative regulation for each listed species to be acquired before submitting the captive wildlife application.

(9) A person in legal possession of native wildlife that moves to Kentucky shall have thirty (30) days to pass a facility inspection and apply for a captive wildlife permit, provided they possessed a valid transportation permit to import the wildlife.

(10) A captive wildlife permit holder shall not simultaneously hold a wildlife rehabilitation permit.

(11) An applicant shall submit a completed application and the correct fee, as established in 301 KAR 3:022 or 301 KAR 3:061, except if the permit holder is a government agency engaged in legitimate conservation activities approved by the department, the fee shall be waived.

(12) An applicant importing into Kentucky, transporting through Kentucky, or possessing within Kentucky, federally-protected migratory bird species shall possess, and provide to the department, a valid United States Fish and Wildlife Service permit, except for persons or entities that possess a valid falconry permit or meet the conditions listed in 50 C.F.R. 21.12 (a) and (b), 50 C.F.R. 21.13, and 50 C.F.R. 21.14.

(13) Federally endangered native species shall not be imported into Kentucky, transported through Kentucky, or possessed in Kentucky, except by a facility accredited by the Association of Zoos and Aquariums, as established in Section 7 of this administrative regulation, individuals possessing a United States Fish and Wildlife Service permit pursuant to KRS 150.183 and 301 KAR 3:061, or a facility listed as a cooperator in an Association of Zoos and Aquariums species survival plan.

~~[(5) The department shall deny a captive wildlife or transportation permit to an applicant that:~~

- ~~(a) Is less than eighteen (18) years of age;~~
- ~~(b) Has been convicted within the last year of a violation of:~~
  - ~~1. This administrative regulation; or~~
  - ~~2. 301 KAR 2:082;~~
- ~~(c) Does not submit a completed application; or~~
- ~~(d) Does not remit the correct fee pursuant to 301 KAR 3:022.~~
- ~~(6) The department shall deny a captive wildlife permit to an applicant that:~~

~~(a) Has acquired wildlife prior to receiving an approved captive wildlife permit, except as allowed in Sections 2(4) and (5) of this administrative regulation; or~~

~~(b) Holds a wildlife rehabilitation permit as established in 301 KAR 2:075].~~

[(14)] [(7)] An annual transportation permit holder shall submit a revised annual transportation permit application to the department via mail to the address listed on the annual transportation permit application or via email at FWpermits@ky.gov for any amendments to the original application and shall not ship wildlife unless the amendments are approved and a revised permit is issued by the department. [notify the department of any amendments to the original application at least forty-eight (48) hours prior to any wildlife shipment by calling the department at 800-858-1549, Monday through Friday, between 8 a.m. and 4:30 p.m. Eastern time.]

[(15)] [(8)] A person importing or [and] possessing native wildlife shall be responsible for following all applicable federal laws, state laws, and [complying with any] local ordinances [ordinance] regarding [captive] wildlife.

#### Section 6. Prohibited Species.

[(1)] [(1)] Except as established [specified] in Sections 2(7) and [Section] 7 of this administrative regulation, 301 KAR 2:075, and 301 KAR 3:120, a person shall not import, transport into Kentucky, or possess [a]:

- [(1)] [(a)] Alligator snapping turtle (Macrochelys temminckii);
- [(2)] [(b)] Bats of any species that are native to Kentucky, including:

- (a) Big Brown Bat (Eptesicus fuscus);
- (b) Eastern Red Bat (Lasiurus borealis);
- (c) Eastern Small-Footed Myotis (Myotis leibii);
- (d) Evening Bat (Nycticeius humeralis);
- (e) Gray Bat (Myotis grisescens);

(f) Hoary Bat (*Lasiurus cinereus*);  
 (g) Indiana Bat (*Myotis sodalis*);  
 (h) Little Brown Bat (*Myotis lucifugus*);  
 (i) Northern Long-Eared Bat (*Myotis septentrionalis*);  
 (j) Rafinesque's Big-Eared Bat (*Corynorhinus rafinesquii*);  
 (k) Seminole Bat (*Lasiurus seminolus*);  
 (l) Silver-Haired Bat (*Lasionycteris noctivagans*);  
 (m) Southeastern Myotis (*Myotis austroriparius*);  
 (n) Tricolored Bat (*Perimyotis subflavus*);  
 (o) Virginia Big-Eared Bat (*Corynorhinus townsendii virginianus*);  
 (3) Black bear (*Ursus americanus*);  
 (4) Bobcat (*Lynx rufus*);  
 (5)(e) Copperbelly water snake (*Nerodia erythrogaster neglecta*);  
 (6)(d) Cougar or mountain lion (*Felis concolor*);  
 (7) Hellbender (*Cryptobranchus alleganiensis*);  
 (8) Kirtland's Snake (*Clonophis kirtlandii*);  
 (9) Otter (*Lontra canadensis*);  
 (10) Rabies Vector Species (Coyote (*Canis latrans*), Gray fox (*Urocyon cinereoargenteus*), Raccoon (*Procyon lotor*), Red fox (*Vulpes vulpes*), Spotted skunk (*Spilogale putorius*), Striped skunk (*Mephitis mephitis*)), or any hybrid of rabies vector species.  
 (11) Wild rabbits (All species of the Order Lagomorpha);  
 (12)(e) Wild turkey (*Meleagris gallopavo*); or  
 (13)(f) Wolf (*Canis lupus*).  
 (2) The species established in paragraphs (a) through (d) of this subsection shall not be imported into or transported through Kentucky, except as specified in Section 7 of this administrative regulation.  
 (a) Coyote (*Canis latrans*);  
 (b) Fox (*Vulpes* spp.; *Alopex lagopus*; *Urocyon cinereoargenteus*);  
 (c) Raccoon (*Procyon lotor*); or  
 (d) Skunk (*Mephitis* spp.; *Spilogale putorius*; *Conepatus leuconotus*);]

#### Section 7. Exemptions.

(1) Accredited facilities. A facility that is accredited by the Association of Zoos and Aquariums [American Zoo and Aquarium Association] shall:  
 (a) Not be required to obtain a transportation or captive wildlife permit for native wildlife; [and]  
 (b) Be allowed to import, transport, and possess federally endangered species and the prohibited species established in Section 6(1) and (2) of this administrative regulation for official zoo activities; and  
 (c) Maintain prohibited species in an enclosure sufficient to prevent escape and direct contact with the public.  
 (2) Commissioner's exemption.  
 (a) Upon written request, the commissioner [department] shall consider [grant] an exemption for the importation or possession of the prohibited species listed in Section 6(1) and (2) for legitimate scientific or educational purposes, [by the following entities:]  
 (b) The commissioner shall exercise his or her discretion and only grant exemptions that are determined to promote and further the purposes of KRS Chapter 150.  
 (c) Only the following entities shall be eligible for consideration for an exemption by the commissioner:  
 1. (a) A facility that is designated as the official zoo of a municipality;  
 2. (b) A government agency conducting research or education at a permanent wildlife center; or  
 3. (c) A college or university conducting research or education that fulfills a classroom requirement; or  
 (d) A licensed or accredited institution of:  
 1. Research; or  
 2. Education].  
 (3) Legally possessed prohibited species.  
 (a) Prohibited species legally possessed in Kentucky prior to April 4, 2023 may be allowed to remain in possession of a valid permit holder through the life of the animal by microchipping any rabies vector species, bobcats, or otters and reporting the

microchip number to the department by submitting a "Native Prohibited Wildlife Report" form, found on the department's Web site at fw.ky.gov, by June 4, 2023

(b) Prohibited species shall not be transferred to other persons, except if the permit holder predeceases the animal, the animal may be transferred to another valid permit holder.

(c) Prohibited species shall not be allowed to reproduce.

(d) A person who legally possesses prohibited wildlife shall not replace that wildlife after its death.

(e) Prohibited species possessed or imported into Kentucky shall be maintained within an enclosure sufficient to prevent:

1. Escape; and

2. Direct contact with the public.

#### Section 8. Confining Facilities.

(1) Except as established in 301 KAR 2:041, a cage, pen, or other enclosure for confining native wildlife shall be of sufficient structural strength to:

(a) Prevent the escape of the captive animal;

(b) Protect the caged animal from injury and predators; and

(c) Prevent the entrance of free individuals of the same species.

(2) A wing-clipped and pinioned bird may be kept in a suitable unroofed enclosure, even though wild birds of the same species may enter the enclosure.

(3) A person shall not maintain any native wildlife in captivity in an unsanitary or unsafe condition or in a manner that results in the maltreatment or neglect of that wildlife.

(4) Native wildlife shall not be confined in any cage or enclosure that does not meet the minimum cage specifications in Section 9 of this administrative regulation.

(5) A cage or enclosure shall be maintained as established in paragraphs (a) through (n) of this subsection:

(a) Clean drinking water shall be provided daily in clean containers;

(b) Swimming or wading pools shall be cleaned as needed to ensure good water quality;

(c) Any cage or enclosure shall provide adequate drainage of surface water;

(d) A captive mammal or bird shall be fed daily;

(e) Food shall be:

1. Of a type and quantity that meets the nutritional requirements for the particular species; and

2. Provided in an unspoiled and uncontaminated condition;

(f) Any feeding container shall be kept clean, and uneaten food shall be removed within a reasonable time;

(g) A shelter shall be provided for security and protection from inclement weather;

(h) Shade or an overhead structure shall be provided in warm seasons;

(i) Fecal and food waste shall be:

1. Removed from cage daily; and

2. Stored or disposed of in a manner that prevents noxious odors and insect pests;

(j) Any cage or enclosure shall be ventilated to prevent noxious odors;

(k) A hard floor within a cage or enclosure shall be cleaned a minimum of once per week;

(l) A cage or enclosure with a dirt floor shall be raked a minimum of once every three (3) days with the waste removed;

(m) Animals that are compatible may be held in the same enclosure if the required floor space is provided; and

(n) A common wall shall be constructed between animals that are not compatible so the animals cannot interact.

#### Section 9. Minimum Enclosure Sizes and Associated Requirements for Stationary Facilities.

(1) Birds.

(a) A northern bobwhite older than fourteen (14) weeks shall be held in an enclosure that meets the requirements established in subparagraphs 1. through 3. of this paragraph.

1. An enclosure for a single northern bobwhite shall be a minimum of 100 square feet.

2. There shall be an increase in one (1) square foot per

additional northern bobwhite.

3. A northern bobwhite may be held in smaller breeding pens during the breeding season.

(b) A duck shall be held in an enclosure that meets the requirements established in subparagraphs 1. and 2. of this paragraph.

1. No more than two (2) pairs or one (1) pair and their offspring prior to first molt shall be confined to an area smaller than 100 square feet; and

2. There shall be at least two (2) square feet of additional land space for each additional adult duck.

(c) A goose shall be held in an enclosure that meets the requirements established in subparagraphs 1. through 3. of this paragraph.

1. No more than two (2) pair or one (1) pair and their offspring prior to first molt shall be confined to an area smaller than 500 square feet;

2. There shall be a minimum of fifty (50) square feet of water that is two (2) feet or greater in depth; and

3. There shall be at least 100 square feet of land and twenty-five (25) square feet of water surface for each additional adult goose.

(d) A ruffed grouse shall be held in an enclosure that meets the requirements established in subparagraphs 1. and 2. of this paragraph.

1. There shall be 200 square feet of floor space for five (5) or fewer birds with a height of at least six (6) feet; and

2. There shall be an additional twenty (20) square feet of floor space for each additional bird.

(e) A raptor shall be held in an enclosure meeting the federal falconry standards described in 50 C.F.R. Part 21.29.

(2) Mammals.

(a) A bat shall be held in an enclosure that meets the requirements established in subparagraphs 1. through 3. of this paragraph.

1. A little brown bat, long-eared bat, and pipistrelle shall be held in an enclosure that is at least 6 ft. x 6 ft. x 6 ft.

2. An evening or red bat shall be held in an enclosure that is at least 8 ft. x 12 ft. x 8 ft.

3. A big brown or hoary bat shall be held in an enclosure that is at least 10 ft. x 20 ft. x 8 ft.

(b) Except as established in 301 KAR 2:041, a fox, bobcat, or raccoon shall be held in an enclosure that meets the requirements established in subparagraphs 1. and 2. of this paragraph.

1. A single animal enclosure shall be 8 ft. x 8 ft. x 6 ft.; and

2. There shall be thirty (30) square feet floor space for each additional animal.

(c) A coyote shall be held in an enclosure that meets the requirements established in subparagraphs 1. and 2. of this paragraph.

1. A single animal enclosure shall be 8 ft. x 8 ft. x 6 ft.; and

2. There shall be twenty-five (25) square feet floor space for each additional animal.

(d) A beaver or otter shall be held in an enclosure that meets the requirements established in subparagraphs 1. through 4. of this paragraph.

1. A single animal enclosure shall be 8 ft. x 12 ft. x 6 ft. with a 4 ft. x 6 ft. pool that is three (3) feet deep at one (1) end;

2. There shall be an increase in horizontal cage size and pool size by eight (8) square feet for each additional animal;

3. An otter shall have a slide and a dry place for sleeping and retreat; and

4. A beaver shall be supplied with gnawing logs and a dry place for sleeping and retreat.

(e) A muskrat or mink shall be held in an enclosure that meets the requirements established in subparagraphs 1. through 3. of this paragraph.

1. A single animal enclosure shall be 6 ft. x 4 ft. x 3 ft. with a 2 ft. x 4 ft. pool which is two (2) feet deep at one (1) end;

2. There shall be an increase in horizontal cage size by eight (8) square feet and a pool size of two (2) square feet; and

3. A muskrat shall have gnawing material.

(f) A gray squirrel, fox squirrel, or flying squirrel shall be held in an enclosure that meets the requirements established in

subparagraphs 1. and 2. of this paragraph.

1. A single animal enclosure shall be 4 ft. x 4 ft. x 8 ft.; and

2. There shall be an increase in floor space by two (2) square feet for each additional animal.

(g) A skunk, opossum, rabbit, or woodchuck shall be held in an enclosure that meets the requirements established in subparagraphs 1. through 3. of this paragraph.

1. A single animal enclosure shall be 6 ft. x 8 ft. x 8 ft.;

2. There shall be an increase in floor space by four (4) square feet for each additional animal; and

3. A woodchuck shall have several gnawing logs approximately six (6) inches in diameter.

(h) A weasel shall be held in an enclosure that meets the requirements established in subparagraphs 1. and 2. of this paragraph.

1. A single animal enclosure shall be 3 ft. x 3 ft. x 3 ft.; and

2. There shall be an increase in floor space by three (3) square feet for each additional animal.

Section 10. Mobile Facility. A mobile facility used in transporting native wildlife shall meet the requirements established in subsections (1) through (5) of this section.

(1) The mobile facility shall be equipped to provide fresh air and adequate protection from the elements, without injurious drafts.

(2) The animal housing area shall be free of engine exhaust fumes.

(3) A cage shall be large enough to ensure that each animal has sufficient room to stand erect and lay naturally.

(4) The structural strength of the enclosure shall be sufficient to contain the live animals and to withstand the normal rigors of transportation.

(5) Native wildlife housed in a mobile facility for more than ten (10) days shall be housed in a cage that meets the minimum cage specifications provided in Section 8 of this administrative regulation~~[Wildlife transported in the same cage area shall be in compatible groups].~~

Section 11. Temporary Facility. Native wildlife housed in a temporary facility or exhibit shall be housed in a cage that meets the minimum cage specifications provided in Section 8 of this administrative regulation if present in any geographical location for more than ten (10) days.

Section 12. Inspections and Access~~[and Permit Revocation]~~.

(1) A permit holder shall allow a conservation officer to inspect the holding facilities, and the property on which the holding facilities are located, at any reasonable time.

(2) A conservation officer shall immediately notify the permit holder if the inspection reveals a violation of any provision of this administrative regulation.

(3) A facility shall fail inspection if any deficiencies are found during the inspection, or if the permit holder denies entry to the conservation officer at a reasonable time.

(4) An applicant that fails a facility inspection shall correct any deficiencies within ten (10) days of the failed inspection.

(5) A permit holder shall allow any department approved representative, accompanied by a conservation officer, to access the wildlife holding facilities and the property on which the holding facilities are located at any reasonable time to carry out the purposes of this regulation.

Section 13. Permit Denial and Revocation. (1) Denial. The department shall deny the issuance of a new permit, or deny a renewal of an existing or lapsed permit, and confiscate wildlife of a person who:

(a) Is convicted of a violation of any provisions of:

1. KRS Chapter 150;

2. Any department regulation; or

3. Any federal statute or regulation related to hunting, fishing, or wildlife;

(b) Provides false information on a captive wildlife permit application, transportation permit application, certificate of veterinary inspection, federal quarantine certificate, request for

commissioner's exemption, federal permits, reports, facility inspection, or records:

(c) Acquires wildlife prior to receiving an approved captive wildlife permit, transportation permit, or commissioner's exemption, except as established in Section 2(4), (5), and (6):

(d) Fails a facility inspection, as established in Section 12; or

(e) Fails to comply with any provision of this regulation, 301 KAR 2:041, 301 KAR 2:082, 301 KAR 2:084, 301 KAR 2:195, 301 KAR 2:230 or 301 KAR 2:251.

(2) Revocations.

(a) The department shall revoke the permit, and confiscate wildlife, of a person who:

1. Is convicted of a violation of any provisions of:

a. KRS Chapter 150;

b. Any department regulation; or

c. Any federal statute or regulation related to hunting, fishing, or wildlife;

2. Provides false information on a captive wildlife permit application, transportation permit application, certificate of veterinary inspection, federal quarantine certificate, request for commissioner's exemption, federal permits, reports, facility inspection, or records;

3. Acquires wildlife prior to receiving an approved captive wildlife permit, transportation permit, or commissioner's exemption, except as established in Sections 2(4), (5), and (6);

4. Fails a facility inspection, as established in Section 12; or

5. Fails to comply with any provision of this administrative regulation, 301 KAR 2:041, 301 KAR 2:082, 301 KAR 2:084, 301 KAR 2:195, 301 KAR 2:230 or 301 KAR 2:251.

(b) If a person's captive wildlife permit is revoked for one (1) facility, permits for all other facilities in their name shall be revoked.

(c) A fee shall not be refunded for a permit that is revoked.

(3) Denial period.

(a) An applicant for a captive wildlife permit or transportation permit whose permit has been revoked or denied for the grounds established in this section shall be ineligible to reapply, and all applications denied for the period established below:

1. The initial denial period shall be one (1) year;

2. A second denial period shall be three (3) years;

3. A third or subsequent denial period shall be five (5) years;

(b) The department shall deny all captive wildlife permit applications for any facility in which a permit was denied or revoked, for the same period of time as the denial period, as established in this section.

(4) Commissioner's exemption.

(a) A commissioner's exemption shall be revoked and future exemptions may be denied for:

1. Failure to maintain wildlife in an enclosure sufficient to prevent escape and direct contact with the public;

2. Failure to abide by the provisions set forth in an exemption letter or this regulation; or

3. Any other reason necessary to protect public health, public safety, native ecosystems, or native wildlife.

(b) If an exemption is terminated, all prohibited species shall be immediately placed in an enclosure sufficient to prevent escape and direct contact with the public and removed from the state within forty-eight (48) hours.

(5) Confiscated wildlife.

(a) All captive wildlife shall be confiscated if a captive wildlife permit, transportation permit, or commissioner's exemption is revoked or denied, or a person possesses native wildlife without a valid captive wildlife permit, transportation permit, or commissioner's exemption, except as established in Section 2(4), (5), or (6) or in Section 13, subsection 4(3)(b).

(b) Confiscated wildlife shall be released, transferred with the approval of the Wildlife Division, or dispatched, except that rabies vector species shall be dispatched immediately.

(c) Wildlife shall not be returned to the person, entity, or facility from which they were confiscated.

(d) Wildlife shall be surrendered to the department, for processing and disposition pursuant to regulation, upon being presented with a written order by the commissioner. [A captive wildlife permit shall be revoked for a period of one (1) year and all captive wildlife confiscated if a violation is not corrected within ten

(10) days of the initial inspection.

(4) A fee shall not be refunded for a permit that is revoked].

(6) Administrative hearings.

(a) [(5)] An individual whose permit has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.

(b) A request for a hearing shall be in writing and postmarked or delivered in person to the department no later than thirty (30) days after notification of the denial or the revocation.

(c) Upon receipt of the request for a hearing, the department shall proceed according to the provisions of KRS Chapter 13B.

(d) The hearing officer's recommended order shall be considered by the commissioner and the commissioner shall issue a final order, pursuant to KRS Chapter 13B.

Section 14. [Section 13.] Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Captive Wildlife Permit Application", 2022[2012] edition;

(b) "Annual Transportation Permit Application", 2022[2012] edition; [and]

(c) "Individual Transportation Permit Application", 2022[2012] edition;

(d) "Native Prohibited Wildlife Report", 2022 edition; and

(e) "Facility Inspection Checklist", 2022 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. or online at:

(a) <https://fw.ky.gov/Wildlife/Documents/captivewildapp.pdf> for the "Captive Wildlife Permit Application";

(b) <https://fw.ky.gov/Wildlife/Documents/annualtransportapp.pdf> for the (Annual Transportation Permit Application";

(c) <https://fw.ky.gov/Wildlife/Documents/indtransportapp.pdf> for the "Individual Transportation Permit Application";

(d) <https://fw.ky.gov/Wildlife/Documents/nativeprohibitedreport.pdf> for the "Native Prohibited Wildlife Report"; and

(e) <https://fw.ky.gov/Wildlife/Documents/RehabLEInspectionChecklist.pdf> for the "Facility Inspection Checklist".

RICH STORM, Commissioner

APPROVED BY AGENCY: September 15, 2022

FILED WITH LRC: September 15, 2022 at 11:45 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 29, 2022, at 12:30 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 November 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jenny Gilbert, Legislative Liaison, 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 requirements for the buying, selling, holding, commercial activity, and transportation of native wildlife.

(b) The necessity of this administrative regulation: This

administrative regulation is necessary to provide a defined process for the holding and transportation of live native wildlife. These processes are necessary to provide for the health and welfare of native wildlife and the safety of Kentucky citizens.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1)(c) authorizes the department to promulgate administrative regulations for the buying, selling, or transporting of wildlife. KRS 150.105 authorizes the department to dispatch or bring under control any wildlife causing damage to persons, property or other animals spreading disease and which should be eliminated to prevent further damage. KRS 150.180 authorizes the department to regulate the buying, selling, or transporting of protected wildlife. KRS 150.280 requires the department to promulgate administrative regulations to establish the procedures for the propagation and holding of protected wildlife. 50 C.F.R. 21.29 establishes the federal standards for holding raptors. This administrative regulation establishes requirements for the buying, selling, holding, and transportation of live native wildlife.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth the requirements for applying for and receiving permits to buy, sell, hold and transport live native wildlife.

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

(a) How the amendment will change this existing administrative regulation: These amendments will develop an online permitting system, expand the department's ability to deny or revoke a permit, clarify who is required to purchase a commercial wildlife permit, waive the fee for government agencies doing legitimate wildlife conservation, clarify that each non-contiguous captive wildlife facility needs a separate permit, prohibit the possession of eastern hellbender, eastern spotted skunk, Kirtland's snake, bobcats, Copperbelly water snake, rabies vector species, and bats, update the prohibited species exemption section, and provide grandfathering for previously held prohibited wildlife species.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to manage captive held native wildlife and improve the permitting process for these animals. Additionally, these amendments improve health and human safety in regards to the possession of live native wildlife.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above. This amendment falls within the reach of the authorizing statute KRS 150.025 (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: These amendments will make it easier and more straightforward to apply for a captive wildlife permit. Additionally, these amendments will help protect our citizenry and our wildlife populations from disease and other dangers posed by captive native wildlife. These regulations may impact those people who wish to be in possession of live native wildlife and those organizations requesting a commissioner's exemption to use or exhibit prohibited species of live native wildlife. These amendments are necessary for the health and safety of people and wildlife populations. Currently, there are 82 captive wildlife permit holders 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: These amendments will allow for a more efficient permitting process for those species of live native wildlife that are legal to possess. Additionally, those persons in possession of a newly prohibited species will be allowed to hold that animal until the end of its life.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): A minor cost will be incurred to have grandfathered prohibited species microchipped, if in possession. No additional

costs will be incurred for other entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those persons holding prohibited native wildlife will be allowed to maintain the animal for the remainder of its life.

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

(a) Initially: There will be no initial administrative cost to the department to implement this administrative regulation.

(b) On a continuing basis: There will be no cost to the department on a continuing basis.

(6) What is the source of the funding to be used for 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 any other fees or to increase funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established directly or indirectly.

(9) TIERING: Is tiering applied? No. Tiering is not applied because all permit holders are treated the 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 Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.280 authorizes the department to promulgate administrative regulations to establish the procedures for the propagation and holding of protected wildlife. 50 C.F.R 17, 21, and 22 establishes the federal standards for holding migratory birds, including raptors, and federally threatened and endangered wildlife.

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

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

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

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no cost savings for subsequent years.



(c) How much will it cost the regulated entities for the first year? There will be no cost to regulated entities for the first year.

(d) How much will it cost the regulated entities for subsequent years? There will be no costs to regulated entities 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.

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 will be no major economic impact incurred.

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 50 C.F.R. 21.29 or 50 C.F.R. 17, 21, and 22.

(2) State compliance standards. KRS 150.330 and KRS 150.183

(3) Minimum or uniform standards contained in the federal mandate. 50 C.F.R. 21.29 establishes the federal standards for holding raptors for falconry purposes. 50 C.F.R. 17 establishes the federal standards for threatened and endangered wildlife. 50 C.F.R. 21 establishes the federal standards for migratory birds. 50 C.F.R. 22 establishes the federal standards for bald and golden eagles as the Bald and Golden Eagle Act.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, changes to this administrative regulation were made to align with the federal statutes and regulations. The exception is that this regulation was amended to meet KRS 150.183 that prohibits federally endangered species from entering the state unless a federal permit is provided.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This regulation was amended to adhere to both federal and state statutes. KRS 150.183 prohibits importation, transportation, and possession of endangered species unless a federal permit is provided to the department. This provides further protections to endangered species that need stricter protections to populations and are often utilized for entertainment or exhibition purposes, at the detriment of native wildlife populations.

#### TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

#### 301 KAR 2:082. Transportation and holding of live exotic wildlife.

RELATES TO: KRS 13B, 150.010, 150.015, 150.186, 150.320, 150.330, 150.990, 150.183, 150.195, 150.235, 258.065, 258.085

STATUTORY AUTHORITY: KRS 65.877, 150.025(1), 150.090, 150.105, 150.180, 150.280, 50 C.F.R. 17, 50 C.F.R. 21, 18 U.S.C. 42-43, 16 U.S.C. 3371-3378

NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.877 authorizes local governments to regulate or prohibit inherently dangerous wildlife as identified by the Department of Fish and Wildlife Resources and requires the department to establish procedures for denying or issuing a transportation permit. KRS 150.025(1) authorizes the department to regulate the buying, selling, or transporting of wildlife. KRS 150.090 authorizes the department to appoint conservation officers charged with the enforcement of this chapter. KRS 150.105 authorizes the department to destroy or bring under control any wildlife causing

damage to persons, property or other animals spreading disease and that should be eliminated to prevent further damage. KRS 150.180 authorizes the department to regulate the transportation and importation of wildlife into Kentucky. KRS 150.280 requires the department to promulgate administrative regulations establishing procedures for the holding of protected wildlife. 50 C.F.R. 21 establishes the federal standards for holding migratory birds, including raptors. 50 C.F.R. 17 establishes the federal standards for endangered and threatened wildlife. This administrative regulation establishes the procedures for obtaining a transportation permit for exotic wildlife, prohibits the importation and possession of exotic species with the potential to damage native ecosystems, and places restrictions on importing, transporting, and holding species that are potentially dangerous to human health and safety.

Section 1. Definition. "Exotic wildlife" means wildlife species that have never naturally existed in the wild in Kentucky, including species introduced by man that have become naturalized.

#### Section 2. Transportation Permits and Certificates of Veterinary Inspection.

(1) A person shall apply for and obtain a valid transportation permit or permit authorization number from the department for all shipments of exotic wildlife, unless otherwise exempted or prohibited by this or another administrative regulation, prior to:

- (a) Receiving a shipment of wildlife from outside of Kentucky;
- (b) Importing exotic wildlife into Kentucky; or
- (c) Transporting exotic wildlife into Kentucky.

(2) A copy of a valid transportation permit or permit authorization number shall accompany all shipments of wildlife into Kentucky.

(3) An individual transportation permit shall be valid for one (1) shipment of wildlife.

(4) An annual transportation permit shall be valid for multiple wildlife shipments for one (1) year from the date of issue.

(5) All shipments of wildlife, except for amphibians and reptiles, shall be accompanied by a:

- (a) Certificate of veterinary inspection stating that the wildlife is free from symptoms of disease; or
- (b) Federal quarantine certificate.

#### Section 3. Applying for Permits.

(1) A person shall apply for a transportation permit by completing the online application process when available at fw.ky.gov, or by submitting the necessary forms, as identified below, found on the department's Web site at fw.ky.gov:

(a) For an individual transportation permit, an applicant shall submit a completed "Individual Transportation Permit Application" form; or

(b) For an annual transportation permit, an applicant shall submit a completed "Annual Transportation Permit Application" form.

(2) An applicant for a transportation permit shall only obtain wildlife from a legal source.

(3) A permit holder shall be at least eighteen (18) years of age.

(4) An applicant shall submit a completed application and remit the correct fee, as established in 301 KAR 3:022 or 301 KAR 3:061.

(5) An annual transportation permit holder shall submit a revised annual transportation permit application to the department via mail to the address listed on the annual transportation permit application or via email at FWpermits@ky.gov for any amendments to the original application and shall not ship wildlife unless the amendments are approved, and a revised permit issued by the department.

(6) A person importing, transporting, or possessing exotic wildlife shall be responsible for following all applicable federal and state laws and local ordinances regarding wildlife.

(7) A person with a valid falconry permit, as established in 301 KAR 2:195, shall not be required to possess a transportation permit for those raptors held under the falconry permit.

(8) An applicant possessing, importing, or transporting into Kentucky from outside the state federally protected migratory bird species, shall possess, and provide to the department, a valid

United States Fish and Wildlife Service permit, except for persons or entities that meet the conditions listed in 50 C.F.R. 21.12 (a) and (b), 50 C.F.R. 21.13, and 50 C.F.R. 21.14.

(9) Federally endangered exotic species shall not be imported, transported into Kentucky, or possessed, except the Department of Fish and Wildlife Resources may allow importation, transportation, or possession of any exotic endangered species of wildlife pursuant to KRS 150.183 and 301 KAR 3:061.

#### Section 4. Prohibited Species.

(1) Except as specified in Section 5 of this administrative regulation, a person shall not import, transport into Kentucky, or possess the following exotic wildlife that are considered potentially injurious to native ecosystems:

- (a) Baya weaver (*Ploceus philippinus*);
  - (b) Blackbirds (Genus *Agelaius*), except native species;
  - (c) Cape sparrow (*Passer melanurus*);
  - (d) Cowbirds (Genus *Molothrus*), except native species;
  - (e) Cuckoo (Family *Cuculidae*), except native species;
  - (f) Dioch or red-billed quelea (*Quelea quelea*);
  - (g) European blackbird (*Turdus merula*);
  - (h) Fieldfare (*Turdus pilaris*);
  - (i) Flying fox or fruit bat (Genus *Pteropus*);
  - (j) Fox (Genus *Cerdocyon*, Genus *Lycalopex*, Genus *Otocyon*, Genus *Urocyon* and Genus *Vulpes*);
  - (k) Gambian giant pouched rat (*Cricetomys gambianus*);
  - (l) Giant, marine, or cane toad (*Bufo marinus*);
  - (m) Hawaiian rice bird or spotted munia (*Lonchura punctulata*);
  - (n) Java sparrow (*Padda oryzivora*);
  - (o) Madagascar weaver (*Foudia madagascariensis*);
  - (p) Mistle thrush (*Turdus viscivorus*);
  - (q) Monk or Quaker parakeet (*Myiopsitta monachus*);
  - (r) Multimammate rat (Genus *Mastomys*);
  - (s) Mute swan (*Cygnus olor*);
  - (t) Nutria (*Myocastor coypus*);
  - (u) Prairie dog (*Cynomys* spp.);
  - (v) Raccoon dog (*Nyctereutes procyonoides*);
  - (w) Sky lark (*Alauda arvensis*);
  - (x) Song thrush (*Turdus philomelos*);
  - (y) Starling (Family *Sturnidae*) including pink starlings or rosy pastors (*Sturnus roseus*), except for Indian Hill mynahs (*Gracula religiosa*);
  - (z) Suricate or slender-tailed meerkat (Genus *Suricata*);
  - (aa) Tongueless or African clawed frog (*Xenopus laevis*);
  - (bb) Weaver finch (Genus *Passer*), except *Passer domesticus*;
  - (cc) White eyes (Genus *Zosterops*);
  - (dd) Wild rabbits, hares, and pikas (Order *Lagomorpha*);
  - (ee) Yellowhammer (*Emberiza citrinella*); or
  - (ff) A member of the following families:
    - 1. Suidae (pigs or hogs), except for domestic swine;
    - 2. Viverridae (civets, genets, lingsangs, mongooses and fossas); or
    - 3. Tayassuidae (peccaries and javelinas).
- (2) Except as specified in Section 5 and 6 of this administrative regulation, a person shall not import, transport, or possess the following inherently dangerous exotic wildlife:
- (a) Alligators or caimans (Family *Alligatoridae*);
  - (b) African buffalo (*Syncerus caffer*);
  - (c) Bears (Family *Ursidae*);
  - (d) Cheetah (*Acinonyx jubatus*);
  - (e) Clouded leopard (*Neofelis nebulosa*);
  - (f) Crocodiles (Family *Crocodylidae*);
  - (g) Elephants (Family *Elephantidae*);
  - (h) Gavials (Family *Gavialidae*);
  - (i) Gila monsters or beaded lizards (Family *Helodermatidae*);
  - (j) Hippopotamus (*Hippopotamus amphibius*);
  - (k) Honey badger or ratel (*Mellivora capensis*);
  - (l) Hyenas (Family *Hyaenidae*), all species except aardwolves (*Proteles cristatus*);
  - (m) Komodo dragon (*Varanus komodoensis*);
  - (n) Lions, jaguars, leopards or tigers (Genus *Panthera*);
  - (o) Lynx (Genus *Lynx*);
  - (p) Old world badger (*Meles meles*);

- (q) Primates, nonhuman (Order *Primates*);
- (r) Rhinoceroses (Family *Rhinocerotidae*);
- (s) Snow leopard (*Uncia uncia*);
- (t) Venomous exotic snakes of the families *Viperidae*, *Atractaspididae*, *Elapidae*, *Hydrophidae*, and *Colubridae*, except for hognose snakes (Genus *Heterodon*);
- (u) Wolverine (*Gulo gulo*); or
- (v) Hybrids of all species contained in this list.

#### Section 5. Exemptions.

(1) A facility that is accredited by the Association of Zoos and Aquariums shall:

(a) Not be required to obtain a transportation permit for exotic wildlife;

(b) Be allowed to import, possess, and transport into Kentucky federally endangered species and the prohibited exotic species listed in Section 4 of this administrative regulation for official zoo activities; and

(c) Maintain prohibited exotic species in an enclosure sufficient to prevent escape and direct contact with the public.

(2) Commissioner's exemption.

(a) Upon written request, the commissioner shall consider an exemption for importation, transportation into Kentucky, or possession~~[may grant a written exemption for the possession or transportation into Kentucky]~~ of the prohibited species listed in Section 4.

(b) The commissioner shall exercise his or her discretion and only grant exemptions that are determined to promote and further the purposes of KRS Chapter 150.

~~(c) [(b)]~~ Only the following entities shall be eligible for an exemption by the commissioner:

1. A facility that is designated as the official zoo of a municipality;

2. A college or university conducting research or education that fulfills a classroom requirement;

3. A lawfully operated circus only importing~~[, transporting into Kentucky,]~~ or possessing inherently dangerous exotic wildlife species that are not federally endangered, as listed in the current Endangered Species Act list;

4. A facility previously granted an exemption by the commissioner for the purpose of housing confiscated wildlife and serving as an animal holding facility as a service to the department; and

5. A facility previously granted a commissioner's exemption, as a licensed or accredited institute of education or research, that houses prohibited species at a permanent wildlife facility for educational or research purposes.

#### Section 6. Prohibited Species Requirements.

(1) Prohibited exotic species imported, transported into Kentucky, or possessed shall be maintained within an enclosure sufficient to prevent:

(a) Escape; and

(b) Direct contact with the public.

(2) A person shall obtain a valid~~[apply for a]~~ transportation permit to temporarily transport into the state a prohibited animal listed in Section 4(2) of this administrative regulation and shall not:

(a) Remain in the state in excess of forty-eight (48) hours;

(b) Stop in Kentucky for exhibition purposes; or

(c) Sell, trade, gift, barter, offer for sale, trade, gift, barter, or profit in any way from a prohibited animal while in Kentucky.

(3) Except for Lynx, a person who legally possessed wildlife listed in Section 4(2) of this administrative regulation prior to July 13, 2005, may continue to possess the animal through the life of the animal and shall maintain:

(a) Veterinary records;

(b) Acquisition papers for the animal; or

(c) Any other evidence that establishes that the person possessed the animal in Kentucky prior to July 13, 2005.

(4) Lynx legally held in Kentucky prior to December 1, 2021, may be allowed to remain in possession of the owner through the life of the animal. The owner shall maintain:

(a) Veterinary records;

(b) Acquisition papers for the animal; or

(c) Any other evidence that establishes that the person legally possessed the animal in Kentucky prior to December 1, 2021.

(5) A person who legally possesses wildlife pursuant to subsection (3) or (4) of this section shall not, without an exemption pursuant to Section 5:

(a) Replace the wildlife after its death;

(b) Allow the wildlife to reproduce; or

(c) Transfer wildlife to other persons, except if the owner predeceases the animal, the animal may be transferred to another person with the approval of the Department's Wildlife Division Director.

(6) If exotic wildlife listed in Section 4 of this administrative regulation escapes, the owner shall immediately contact local emergency services and the department at 800-252-5378 to report the escape.

(7) All bites, as established in KRS 258.065, or contact with applicable exotic animals that results in possible exposure to disease or zoonotic infection, shall be reported to the local county health department within twelve (12) hours.

(8) If an exotic mammal bites a person, or a mammal shows symptoms of a rabies infection, the owner of the animal shall arrange for the animal to be killed in a manner as to preserve the brain intact, and the animal's head shall be submitted for testing immediately to a laboratory approved by the Secretary for Health and Family Services to be tested for rabies, as established in 902 KAR 2:070, Section 5 and KRS 258.085(1)(c).

Section 7. Permit-exempt Animals. The following exotic animals shall not require permits from the department for importation, transportation into Kentucky, or possession:

(1) Alpaca (*Vicugna pacos*);

(2) American bison (*Bison bison*);

(3) Breeds and varieties of goats derived from the wild goat or bezoar (*Capra hircus*);

(4) Camel (*Camelus bactrianus* and *Camelus dromedarius*);

(5) Canary (*Serinus canaria*);

(6) Chinchilla (*Chinchilla laniger*);

(7) Cockatoo and cockatiel (family *Cacatuidae*);

(8) Domesticated races of ducks and geese (family *Anatidae*) morphologically distinguishable from wild ducks or geese;

(9) Domesticated races of the European rabbit (*Oryctolagus cuniculus*) morphologically distinguishable from wild rabbits;

(10) Domesticated races of mink (*Mustela vison*), if:

(a) Adults are heavier than 1.15 kilograms; or

(b) The fur color can be distinguished from wild mink;

(11) Domesticated races of rats (*Rattus norvegicus* or *Rattus rattus*) or mice (*Mus musculus*);

(12) Domesticated races of turkeys (*Meleagris gallopavo*) recognized by the American Poultry Association and the U.S. Department of Agriculture, but shall not include captive held or bred wild turkeys;

(13) Domestic yak (*Bos grunniens*);

(14) Gerbil (*Meriones unguiculatus*);

(15) Guinea fowl (*Numida meleagris*);

(16) Guinea pig (*Cavia porcellus*);

(17) Hamster (*Mesocricetus* spp.);

(18) Indian Hill mynah (*Gracula religiosa*);

(19) Llama (*Lama glama*);

(20) Parrot, lovebird, budgerigar, macaw, parakeet (except monk parakeet, *M. monachus*) (families *Psittacidae*, *Psittaculidae*, *Psittichasiidae*);

(21) Peafowl (*Pavo cristatus*);

(22) Pigeon (*Columba domestica* or *Columba livia*) or domesticated races of pigeons;

(23) Ratite, as defined by KRS 247.870; and

(24) Toucan (family *Rhamphastidae*).

Section 8. Release. With the exception of pheasants and chukars, a person shall not release exotic wildlife into the wild.

Section 9. Inspections and Access.

(1) A person in possession of exotic wildlife, pursuant to a transportation permit or commissioner's exemption, shall allow a conservation officer to inspect the holding facilities and the

property on which the holding facilities are located at any reasonable time to carry out the purposes of this administrative regulation.

(2) A transportation permit or commissioner's exemption holder shall allow any department approved representative, accompanied by a conservation officer, to access the holding facilities and the property on which the holding facilities are located at any reasonable time to carry out the purposes of this regulation.

Section 10. Permit Denial and Revocation.

(1) Denial. The department shall deny the issuance of a new permit, or deny a renewal of an existing or lapsed permit, and may confiscate wildlife from a person who:

(a) Is convicted of a violation of any provisions of:

1. KRS Chapter 150;

2. 301 KAR Chapters 1 through 5; or

3. Any federal statute or regulation related to hunting, fishing, or wildlife;

(b) Provides false information on a transportation permit application, certificate of veterinary inspection, federal quarantine certificate, request for commissioner's exemption, federal permits, reports, or records;

(c) Acquires wildlife prior to receiving a transportation permit, commissioner's exemption, or certificate of veterinary inspection, except as established in Section 2(5), Section 3(7), Section 5(1) and Section 7; or

(d) Fails to comply with any provision of this administrative regulation, 301 KAR 2:041, 301 KAR 2:081, 301 KAR 2:084, 301 KAR 2:195, 301 KAR 2:230, 301 KAR 2:251, 301 KAR 3:061, 302 KAR 20:020, 302 KAR 20:040, 50 C.F.R. 17, 50 C.F.R. 21, 18 U.S.C. 42-43, or 16 U.S.C. 3371-3378.

(2) Revocations.

(a) The department shall revoke a transportation permit or commissioner's exemption, and may confiscate wildlife, of a person who:

1. Is convicted of a violation of any provisions of:

a. KRS Chapter 150;

b. 301 KAR Chapters 1 through 5; or

c. Any federal statute or regulation related to hunting, fishing, or wildlife;

2. Provides false information on a transportation permit application, certificate of veterinary inspection, federal quarantine certificate, request for commissioner's exemption, federal permits, reports, or records;

3. Acquires wildlife prior to receiving a transportation permit or commissioner's exemption, except as established in Sections 3(7) and 5(1); or

4. Fails to comply with any provision of this administrative regulation, 301 KAR 2:041, 301 KAR 2:081, 301 KAR 2:084, 301 KAR 2:195, 301 KAR 2:230, 301 KAR 2:251, 301 KAR 3:061, 302 KAR 20:020, 302 KAR 20:040, 50 C.F.R. 17, 50 C.F.R. 21, 18 U.S.C. 42-43, or 16 U.S.C. 3371-3378.

(b) A fee shall not be refunded for a permit that is revoked.

(3) Denial period. An applicant for a transportation permit whose permit has been revoked or denied for the grounds established in this section shall be ineligible to reapply, and all applications shall be denied for the period established below:

(a) The initial denial period shall be one (1) year;

(b) A second denial period shall be three (3) years; and

(c) A third or subsequent denial period shall be five (5) years.

(4) Commissioner's exemption.

(a) A commissioner's exemption shall be revoked and future exemptions may be denied for:

1. Failure to maintain wildlife in an enclosure sufficient to prevent escape and direct contact with the public;

2. Failure to abide by the provisions set forth in an exemption letter or this administrative regulation; or

3. Any other reason necessary to protect public health, public safety, native ecosystems, or native wildlife.

(b) If an exemption is terminated, all prohibited species shall be immediately placed in an enclosure sufficient to prevent escape and direct contact with the public and removed from the state within forty-eight (48) hours.

(5) Confiscated wildlife.

(a) All captive wildlife may be confiscated if a transportation permit or commissioner's exemption is revoked or denied, or a person imports, transports into Kentucky, or possesses exotic wildlife without a valid transportation permit, commissioner's exemption, or certificate of veterinary inspection, except as established in Section 2(5), Section 3(7), Section 5(1), and Section 7.

(b) Wildlife that is confiscated, as established in this section, shall not be returned to the person, entity, or facility from which they were confiscated, and shall be transferred or euthanized with the approval of the Wildlife Division Director.

#### Section 11. Administrative Hearings.

(1) An individual whose permit has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.

(2) A request for a hearing shall be in writing and postmarked or delivered in person to the department no later than thirty (30) days after notification of the denial or the revocation.

(3) Upon receipt of the request for a hearing, the department shall proceed according to the provisions of KRS Chapter 13B.

(4) The hearing officer's recommended order shall be considered by the commissioner and the commissioner shall issue a final order, pursuant to KRS Chapter 13B.

#### Section 12. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Annual Transportation Permit Application", 2022[2024] edition;

(b) "Individual Transportation Permit Application", 2022[2024] edition[; and

(c) ~~"Captive Wildlife Prohibited Species report form, 2021 edition;]~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. or online at:

(a)

<https://fw.ky.gov/Wildlife/Documents/annualtransportapp.pdf> for the "Annual Transportation Permit Application";

(b) <https://fw.ky.gov/Wildlife/Documents/indtransportapp.pdf> for the "Individual Transportation Permit Application"[; and

(c)

~~<https://fw.ky.gov/Wildlife/Documents/capprohibitedreport.pdf> for the "Captive Wildlife Prohibited Species Report" form;]~~

RICH STORM, Commissioner

APPROVED BY AGENCY: September 15, 2022

FILED WITH LRC: September 15, 2022 at 11:45 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 29, 2022 at 12:00 p.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through November 30, 2022. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, email [fwpubliccomments@ky.gov](mailto: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 requirements for importation, transportation, and possession of exotic wildlife.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide a defined process for the holding and transportation of live exotic wildlife. These processes are necessary to provide for the protection of our native ecosystem, health and welfare of native wildlife from disease, and the safety of Kentucky citizens.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 65.877 authorizes local governments to regulate or prohibit inherently dangerous wildlife as identified by the department and requires the department to establish procedures for denying or issuing a transportation permit. KRS 150.025(1) authorizes the department to regulate the buying, selling, or transporting of wildlife. KRS 150.090 authorizes the department to appoint conservation officers charged with the enforcement of this chapter. KRS 150.105 authorizes the department to destroy or bring under control any wildlife causing damage to persons, property or other animals spreading disease and which should be eliminated to prevent further damage. KRS 150.180(6) authorizes the department to regulate the importation of wildlife into Kentucky. KRS 150.280 requires the department to promulgate administrative regulations establishing procedures for the holding of protected wildlife.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth the requirements for applying for and receiving transportation permits and commissioner's exemptions to possess, import, and transport through Kentucky from outside the state live exotic wildlife.

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

(a) How the amendment will change this existing administrative regulation: These amendments will develop an online permitting system, expand the department's ability to deny or revoke a permit, prohibit the importation and possession of wild rabbits, hares, pikas and lynx species, improve protections from rabies meeting statutory requirements, update the prohibited species exemption section, and provide grandfathering for previously held legal prohibited wildlife species.

(b) The necessity of the amendment to this administrative regulation: Amendments are necessary to protect native rabbit species from disease, which could impact populations, protect the public from potential exposure to rabies, provide better customer service in the form of an online system, and meet statutory requirements pertaining to endangered species. Additionally, these amendments improve health and human safety in regards to the possession of live exotic wildlife.

(c) How the amendment conforms to the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: These amendments will make it easier and more straightforward to apply for a transportation permit. Additionally, these amendments will help protect our citizenry and our wildlife populations from disease and other dangers posed by captive exotic wildlife. These regulations may impact those people who wish to be in possession of live exotic wildlife and those organizations requesting a commissioner's exemption to use or exhibit prohibited species of live exotic wildlife. These amendments are necessary for the health and safety of people and wildlife populations.

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

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

efficient permitting process for those species of live exotic wildlife that are legal to import, transport, and possess. Additionally, those persons in possession of a newly prohibited species will be allowed to hold that animal until the end of its life.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those persons holding prohibited native wildlife will be allowed to maintain the animal for the remainder of its life.

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

(a) Initially: There will be no initial administrative cost to the department to implement this administrative regulation.

(b) On a continuing basis: There will be no cost to the department on a continuing basis.

(6) What is the source of the funding to be used for 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 any other fees or increase funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No new fees will be established.

(9) TIERING: Is tiering applied? No. Tiering is not applied because all permit holders are treated the equally.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 65.877 authorizes local governments to regulate or prohibit inherently dangerous wildlife as identified by the department and requires the department to establish procedures for denying or issuing a transportation permit. KRS 150.025(1) authorizes the department to regulate the buying, selling, or transporting of wildlife. KRS 150.090 authorizes the department to appoint conservation officers charged with the enforcement of this chapter. KRS 150.105 authorizes the department to destroy or bring under control any wildlife causing damage to persons, property or other animals spreading disease and which should be eliminated to prevent further damage. KRS 150.180(6) authorizes the department to regulate the importation of wildlife into Kentucky. KRS 150.280 requires the department to promulgate administrative regulations establishing procedures for the holding of protected wildlife.

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation during subsequent years.

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

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs to administer

this program for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(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?

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

(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 (+/-):

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)]

#### TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

##### 301 KAR 2:185. Hunter education.

RELATES TO: KRS 150.010, 150.015, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.170

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make these requirements apply to a limited area. This administrative regulation establishes the requirements for hunter education.

Section 1. Definitions.

(1) "Adult" means a person who is at least eighteen (18) years old.

(2) "Hunter education certification [card]" means a credential earned when [a card or similar document that verifies] a person has successfully completed the hunter education requirements.[:

~~(a) Kentucky hunter education course; or~~

~~(b) Hunter education course from another state, province, or country that meets the standards established by the International Hunter Education Association.]~~

(3) "Hunter education exemption permit [certificate]" means a permit[certificate] issued by the department that allows a person who is required to obtain a hunter education certification [card] to hunt for a period of one (1) year from the date obtained.

Section 2. Hunter Education Certification [Card].

(1) Unless exempt pursuant to Section 3 of this administrative regulation or license-exempt pursuant to KRS 150.170, a person born on or after January 1, 1975 shall carry proof of a valid hunter education certification [card] while hunting in Kentucky.

(2) A person who is less than twelve (12) years old hunting without a hunter education certification [card] shall be accompanied by an adult who is in position to take immediate control of the firearm or hunting equipment[weapon] and who:

(a) Has a hunter education certification [card]; or

(b) Is exempt from hunter education requirements.

(3) An adult shall not accompany more than two (2) hunters under twelve (12) years old at any one (1) time.

#### Section 3. Hunter Education Exemptions.

(1) A person who is required to have [a] hunter education, [card] may obtain a temporary hunter education exemption permit [certificate] from the department.

(2) A person hunting with a valid temporary hunter education exemption permit [certificate] shall:

(a) Carry the permit [certificate] while hunting; and  
(b) Be accompanied by an adult who is in position to take immediate control of the firearm or hunting equipment[weapon] and who:

1. Is carrying proof of [a] hunter education certification [card]; or

2. Was born before January 1, 1975.

(3) The department shall not issue more than one (1) hunter education exemption certificate to any individual.

#### Section 4. Hunter Education [Course] Requirements.

(1) In order to obtain a Kentucky hunter education certification [card], a person shall:

(a) ~~[Complete a hunter education course by:~~

~~1. Attending an entire department-sanctioned hunter education course; or~~

~~—2.] Obtain[ing] and possess[ing] a certificate of completion or its equivalent for course work meeting the standards of the International Hunter Education Association from another state, province, or country; or:~~

~~—a. An online hunter education course; or~~

~~—b. A CD-ROM course or its equivalent.]~~

(b) Complete a department sanctioned hunter education series by:

1. Attending an entire in-person or online department-sanctioned hunter education course;

2. Correctly answering at least eighty (80) percent of the questions on a department-sanctioned exam; and

3. [(e)] Safely participating[e] in department-sanctioned live fire exercise[s] unless exempted.

a. A person is exempted from a live fire exercise if he or she:

i. Currently serves in the Armed Forces of the United States of America;

ii. Is a Veteran of the Armed Forces of the United States of America; or

iii. Is a Kentucky peace officer as established in KRS 15.380 and certified as established in KRS 15.404.

b. A person must provide one of the following documents to the department to verify eligibility for the live fire exercise exemption:

i. Current front and back copy of his or her military identification card; or

ii. Copy of an Armed Forces veteran's DD Form 214; or

iii. Copy of an Armed Forces veteran's DD Form 256; or

iv. A letter from the certified peace officer's employer on an official letterhead stating the individual is employed by the agency and is a peace officer as established in KRS 15.380 and certified as established in KRS 15.404.

(2) A person shall be at least nine (9) years old to take the department-sanctioned exam and department-sanctioned live fire exercise. RICH STORM, Commissioner

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on November 29, 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 November 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: 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

301 KAR 2:185. Hunter education

Contact Person: Jenny Gilbert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes hunter requirements for Kentucky hunters.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish minimum standards for responsible and safe hunting.

(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 seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make these requirements apply to a limited area. KRS 150.170 authorizes exemptions for certain people from hunting license and permit requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation will assist in the effective administration of the statutes by providing minimum standards for hunter education, thus placing additional safety requirements relating to methods of take.

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

(a) How the amendment will change this existing administrative regulation: This amendment will allow hunters who have successfully completed hunter education to no longer carry a physical card for proof of successful course completion, but still require hunters to have documentation of course completion. Additionally, this amendment conforms this regulation for a change in KRS 150.170 to exempt current and former members of the Armed Forces and certified peace officers from the live-fire component of the hunter education course.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to conform with Senate Bill 241 as passed during the 2021 Kentucky General Assembly that modifies KRS 150.170. It also allows hunters required to have hunter education to have multiple ways to demonstrate course completion besides carry a physical card only.

(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 320,000 Kentucky hunting license holders and 15,000 individuals who take hunter education instruction each year that will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions will need to be taken for the entities listed.

(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): Hunter education certified hunters will be given more flexibility on how they demonstrate hunter education course completion.

(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 the agency to administer this regulation.

(b) On a continuing basis: There will be no additional cost to the agency to administer this regulation 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 the 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 fees 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 directly or indirectly establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied. The same hunter education requirements apply to all hunters in Kentucky.

#### 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 Information and Education Division and Law Enforcement Division 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) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make these requirements apply to a limited area. KRS 150.170 authorizes exemptions for certain people from hunting license and permit requirements and from attending the live fire portion of the hunter education certification requirement.

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer this program in subsequent years.

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

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 to administer this program in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no cost savings to administer this program in subsequent years.

(c) How much will it cost the regulated entities for the first year? It will not cost the regulated entities in the first year.

(d) How much will it cost the regulated entities for subsequent years? It will not cost the regulated entities 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)]

This administrative regulation will not have a major economic impact.

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. n/a

(2) State compliance standards. n/a

(3) Minimum or uniform standards contained in the federal mandate. n/a

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

(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 2:225. Dove, wood duck, teal, and other migratory game bird hunting.

RELATES TO: KRS 150.330, 150.340, 150.603

STATUTORY AUTHORITY: KRS 150.025(1), 150.360, 150.600(1), 50 C.F.R. 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the Department of Fish and Wildlife 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 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes the requirements for the taking of migratory game birds within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

#### Section 1. Definitions.

(1) "Dove" means mourning dove or white-winged dove.

(2) "Drawn hunter" means a hunter who applied for a quota hunt and was selected by the department to participate in the hunt.

(3) "Experienced hunter" means an adult hunter that has hunted during more than two (2) prior license years.

(4) "Guest hunter" means a hunter invited by a drawn hunter to participate in a quota hunt.

(5) "Mentored hunter" means a hunter that has hunted during no more than two (2) prior license years, who hunts with experienced hunters on department sponsored dove hunts.

(6) "Migratory game bird" means mourning dove, white-winged dove, wood duck, teal, Canada goose, common gallinule, woodcock, snipe, purple gallinule, Virginia rail, or sora rail.

(7) [(3)] "Teal" means green-winged teal, blue-winged teal, or cinnamon teal.

(8) [(4)] "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.

(9) "Youth" means a person who has not reached his or her 16th birthday.

Section 2. September Goose Hunting Zones. (1) The Western goose zone includes all counties west of and including Hardin, Nelson, Washington, Marion, Taylor, Adair and Cumberland counties;

(2) The Eastern goose zone includes Bullitt County in its entirety and all other counties not included in the Western goose zone;

Section 3. Season Dates. (1) A person shall not hunt a migratory game bird except during a season established in this administrative regulation, 301 KAR 2:221, or 301 KAR 2:228.

(2) The seasons established in paragraphs (a) through (g) of this subsection shall apply to migratory bird hunting.

(a) Dove, beginning on:

1. September 1 for fifty-six (56) consecutive days;

2. Thanksgiving Day for eleven (11) consecutive days; and

3. The Saturday before Christmas for twenty-three (23) consecutive days;

(b) Woodcock, beginning on the fourth Saturday in October for forty-seven (47) consecutive days, except that the season shall be closed during the first two (2) days of modern gun deer season, as established in 301 KAR 2:172;

(c) Snipe, beginning on:

1. The third Wednesday in September for forty (40) consecutive days; and

2. Thanksgiving Day for sixty-seven (67) consecutive days;

(d) Wood duck, beginning on the third Saturday in September for five (5) consecutive days;

(e) Teal, beginning on the third Saturday in September for nine (9) consecutive days;

(f) Virginia rail, sora rail, common gallinule, and purple gallinule, beginning on September 1 for seventy (70) consecutive days; and

(g) Canada goose;

1. Eastern goose zone[;] beginning September 16 for fifteen (15) consecutive days; and

2. Western goose zone beginning September 1 for fifteen (15) consecutive days.[except that the areas established in subparagraphs 1. and 2. of this paragraph shall be closed.

1. Public land in the Ballard Zone, as established in 301 KAR 2:224; and

2. Cave Run Lake and the public land inside the boundary formed by Highways 801, 1274, 36, 211, U.S. 60, and Highway 826.]

Section 4.[Section 3.] Bag and Possession Limits.

[(1)] A person shall not exceed the limits established in subsections[paragraphs] (1)[(a)] through (8)[(h)] for seasons established in Section 2 of this administrative regulation[of this subsection].

(1)[(a)] Dove. There shall be a:

(a)[4-] Daily limit of fifteen (15); and

(b)[2-] Possession limit of forty-five (45).

(2)[(b)] Eurasian collared dove. There shall not be a limit, except that a hunter, if in the field or during transport, shall keep the head or a fully-feathered wing attached to the bird.

(a)[1-] The head; or

(b)[2-] A fully-feathered wing.

(3)[(e)] Woodcock. There shall be a:

(a)[1-] Daily limit of three (3); and

(b)[2-] Possession limit of nine (9).

(4)[(d)] Snipe. There shall be a:

(a)[1-] Daily limit of eight (8); and

(b)[2-] Possession limit of twenty-four (24).

(5)[(e)] Virginia and sora rail, singly or in aggregate. There shall be a:

(a)[1-] Daily limit of twenty-five (25); and

(b)[2-] Possession limit of seventy-five (75).

(6)[(f)] Common and purple gallinule, singly or in aggregate. There shall be a:

(a)[1-] Daily limit of three (3); and

(b)[2-] Possession limit of nine (9).

(7)[(g)] Wood duck and teal. There shall be a:

(a)[1-] Daily limit of six (6), which shall not include more than two (2) wood ducks; and

(b)[2-] Possession limit of eighteen (18), which shall not include more than six (6) wood ducks.

(8)[(h)] Canada goose[;] There shall be a:

(a) For the Canada goose seasons beginning in September, there shall be a:

1. Daily limit of five (5); and

2. Possession limit of fifteen (15).

(b) Bag and possession limits for all remaining Canada goose seasons shall be as established in 301 KAR 2:221.

[(2)] A hunter who possesses a migratory game bird other than a dove, in the field or during transport, shall keep the head or a fully-feathered wing attached to the bird.

(a) The head; or

(b) A fully-feathered wing.]

Section 5.[Section 4.] Shooting Hours. A person shall not take a migratory game bird except during the times established in this section.

(1) If hunting dove on WMA land, a person shall hunt:

(a) Between 11 a.m. and sunset during the September and October portion of the season, as established in Section 2 of this administrative regulation; and

(b) Between one-half (1/2) hour before sunrise and sunset during the remainder of the season, as established in Section 2 of this administrative regulation.

(2) If hunting dove on private land, a person shall hunt:

(a) Between 11 a.m. and sunset on September 1; and

(b) Between one-half (1/2) hour before sunrise and sunset during the remainder of the season, as established in Section 2 of this administrative regulation.

(3) Other species listed in this administrative regulation shall be taken between one-half (1/2) hour before sunrise and sunset.

[Section 5. Shot Requirements. A person hunting waterfowl shall not use or possess a shotgun shell:

(1) Longer than three and one-half (3 1/2) inches; or

(2) Containing:

(a) Lead shot;

(b) Shot not approved by the U.S. Fish and Wildlife Service pursuant to 50 C.F.R. Parts 20 and 21 for waterfowl hunting; or

(c) Shot larger than size "T".]

Section 6. Hunter Orange. A person shall be exempt from hunter orange requirements pursuant to 301 KAR 2:132 and 2:172 if:

(1) Hunting waterfowl or doves; or

(2) Accompanying a person hunting waterfowl or doves.

Section 7. Exceptions to Statewide Migratory Game Bird Seasons[on Specified Wildlife Management Areas]. (1) A person shall not:

(a) Hunt wood duck or teal on an area closed to waterfowl hunting as established in 301 KAR 2:222;

(b) Hunt in an area marked by a sign as closed to hunting; or

(c) Enter an area marked by a sign as closed to the public.

(d) Hunt geese during September on:

1. Public land in the Ballard Zone, as established in 301 KAR 2:221; and

2. Cave Run Lake and the public land inside the boundary formed by Highways 801, 1274, 36, 211, U.S. 60, and Highway 826.

(2) A person hunting migratory birds on any of the areas established in paragraphs (a) through (k) of this subsection shall only use or possess nontoxic shot approved by the U.S. Fish and Wildlife Service pursuant to 50 C.F.R. Parts 20 and 21:

(a) Ballard WMA;

(b) Boatwright WMA;



- (c) Doug Travis WMA;
  - (d) Duck Island WMA;
  - (e) Kaler Bottoms WMA;
  - (f) Kentucky River WMA;
  - (g) Ohio River Islands WMA;
  - (h) Sloughs WMA;
  - (i) South Shore WMA;
  - (j) Yatesville Lake WMA; and
  - (k) A WMA wetland management unit that is posted by sign.
- (3) At Ballard WMA and the Swan Lake Unit of Boatwright WMA, a person shall not hunt:
- (a) Dove, Virginia rail, sora rail, common gallinule, purple gallinule, or snipe after October 13; or
  - (b) Woodcock.
- (4) At Miller Welch - Central Kentucky WMA, a person shall not hunt:
- (a) Dove or snipe after October 13; or
  - (b) Woodcock.
- (5) At Grayson Lake WMA, a person shall not hunt:
- (a) Within three-quarters (3/4) of a mile from the dam including the no-wake zone of the dam site marina;
  - (b) On Deer Creek Fork; or
  - (c) On Camp Webb property or the state park, except for participants drawn for any department-sponsored quota dove hunt on Camp Webb property in September.
- (6) At Land Between the Lakes National Recreation Area, a person shall not hunt a migratory game bird between the last Saturday in September and November 30.
- (7) At West Kentucky WMA, a person shall not hunt Canada geese during the September season.
- (8) At Yatesville Lake, the following areas shall be closed to waterfowl hunting, unless authorized by Yatesville Lake State Park:
- (a) The Greenbrier Creek embayment; and
  - (b) The lake area north of the mouth of the Greenbrier Creek embayment to the dam, including the island.
- (9) At Robinson Forest WMA, a person shall not hunt a migratory game bird on the main block of the WMA.

Section 8. Youth and Mentored Hunter~~[Youth-Mentor]~~ Dove Hunts. (1) There shall be department-sponsored youth and mentored hunter~~[youth-mentor]~~ dove hunts ~~[on the first Saturday in September]~~ in which participants shall be selected by a random computerized drawing.

- (2) A youth or mentored hunter shall:
  - (a) Apply on the department's Web site at fw.ky.gov between the first Monday in August and the third Friday in August; and
  - (b) Carry a department provided selection notification letter on the day of the hunt.
- (3) Each youth or mentored hunter shall be accompanied by an experienced hunter~~[adult who is eighteen (18) years or older]~~.
- (4) At the youth or mentored hunter~~[youth-mentor]~~ hunts:
  - (a) Each youth or mentored hunter shall not be accompanied by more than one (1) experienced hunter~~[adult]~~;
  - (b) One (1) experienced hunter~~[adult]~~ may accompany two (2) youths or mentored hunters; and
  - (c) A maximum of two (2) shotguns are allowed per party.
- (5) A person shall:
  - (a) Hunt within fifteen (15) feet of the assigned location stake; and
  - (b) Not change locations unless another location has been vacated by the assigned hunter.
- (6) A person shall only discharge a firearm within fifteen (15) feet of the assigned location stake.
- (7) A person shall leave their firearm at the assigned location stake when retrieving birds.
- (8) A hunter participating in youth or mentored hunter~~[youth-mentor]~~ hunts shall:
  - (a) Check-in prior to hunting;
  - (b) Not begin hunting before 2 p.m.;
  - (c) Cease hunting by 7 p.m.;
  - (d) Exit the area by 7:30 p.m.; and
  - (e) Check out before exiting the field.

Section 9. Dove Quota Hunts. (1) A person applying to hunt

doves on a department dove quota hunt shall:

- (a) Apply on the department's web site at fw.ky.gov between the first Monday in August and the third Friday in August; and
- (b) Not apply for more than one (1) quota hunt.
- (2) A person drawn to hunt on a dove quota hunt may bring up to one (1) additional quest hunter.
- (3) A hunter need not apply for the quota hunt to participate as a quest, nor does checking-in prior to or participating in the quota hunt constitute applying for the quota hunt.
- (4) A person hunting doves on department quota hunt shall:
  - (a) Check-in prior to hunting;
  - (b) Not begin hunting before 1 p.m. in the Eastern Time Zone and by 12 p.m. in the Central Time Zone;
  - (c) Carry a copy of their department provided selection notification letter on the day of the hunt, except quest hunters shall carry a copy of their host hunter's selection notification letter;
  - (d) Not hunt as a quest hunter unless the drawn hunter who invited them is present in field;
  - (e) Cease hunting and exit the field by 6 p.m. in the Eastern Time Zone and by 5 p.m. in the Central Time Zone;
  - (f) Check out of the area by accurately completing the Post-Hunt Survey provided by the department and submitting the survey at the department designated drop point before exiting the field; and
  - (g) Not possess more than fifty (50) shotshells.

RICH STORM, Commissioner

APPROVED BY AGENCY: September 15, 2022

FILED WITH LRC: September 15, 2022 at 11:45 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 29, 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 November 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jenny Gilbert, Legislative Liaison, 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 seasons and bag limits within 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 hunting of migratory birds.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish the 2018–2019 migratory bird seasons 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 authorizes the department to restrict methods for the taking of wildlife. 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 migratory bird hunting seasons and area specific requirements 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 create two zones for Canada goose hunting in September. The Eastern zone will retain a September 16-30 hunting season. The Western zone will move the season to September 1-15. This amendment will allow the Department to implement "Mentored Hunter" hunts in addition to our youth dove hunts. Recent research shows recruitment of new hunters is best accomplished in young adults versus kids. This will give the Department the ability to recruit both groups going forward. This amendment will also allow the department to create quota/limited access dove hunts. Current unrestricted use of dove fields limits the temporal use of Department controlled fields to just a few days. By limiting access, limiting time of hunting, and the number of shells a hunter can use, the Department hopes to extend the temporal use of a few select fields.

(b) The necessity of the amendment to this administrative regulation: Goose movements in western Kentucky differ from geese in Eastern Kentucky. By creating zones, the Department hopes to increase access to geese feeding on recently cut silage fields. Allowing for adult mentored dove hunts gives the department greater flexibility in recruitment efforts. Quota hunts for doves hopes to increase value of dove fields by allowing for harvest of doves over an extended period. Dove fields are expensive and the Department hopes to get multiple hunts in September versus the current first day or two we get now because of the heavy pressure.

(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.

(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 to hunt geese during a September timeframe specified by where they live. Dove hunters wishing to utilize "quota hunt fields" (<10% of total fields) will have to apply for the hunts on the Department website and be drawn via a random drawing. Selected hunters will have to complete a post hunt survey.

(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): Goose hunters will potentially have more hunting opportunity. Adults will also be able to participate in the limited access dove hunts.

(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 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 any other fees or increase funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases 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, 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 regulated entities in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no cost savings for regulated entities in subsequent years.

(c) How much will it cost the regulated entities for the first year? There will be no additional costs for regulated entities in the first year.

(d) How much will it cost the regulated entities for subsequent years? There will be no additional costs in subsequent years for regulated entities.

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: These regulations changes will not impact the cost of migratory bird hunting and thus will not impact hunters fiscally.

(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)] These regulation changes will not have a "Major economic impact".

## 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 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 and possession limits. 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.

(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 migratory bird hunters. Restricting bag limits provides the state the ability to protect populations that may be of concern on the state level but not on a national scale. The greatest concentrations of migratory birds and the greatest hunting pressure often occur on public lands managed by the Department. The Department imposes more restrictive regulations on these lands in effort to meet migratory bird management objectives while still providing quality hunting opportunity.

### **TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)**

#### **301 KAR 2:251. Hunting and trapping seasons and limits for furbearers.**

RELATES TO: KRS 150.170, 150.180, 150.370, 150.399, 150.415, 150.416, 150.990, 150.995

STATUTORY AUTHORITY: KRS 150.025(1), 150.175(7), (9), 150.360, 150.400, 150.410

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.175(7), (9) authorizes the department to issue licenses, permits, and tags for hunting and trapping. KRS 150.360 requires restrictions on the taking of wildlife and authorizes the department to promulgate administrative regulations establishing the requirements for hunting coyotes at night. KRS 150.400 authorizes the department to establish the types of traps that can legally be used by trappers. KRS 150.410 authorizes the department to regulate trap tags, trap visitation, and trap placement to protect domestic animals. This administrative regulation establishes seasons, bag limits, legal methods of take, and checking and recording requirements for hunting and trapping furbearers.

Section 1. Definitions. (1) "Body-gripping trap" means a commercially manufactured spring-loaded trap designed to kill an animal upon capture.

(2) "Dry land set" means a trap that is placed so that no portion of the trap touches the water of a river, stream, pond, lake, wetland, or other water course.

(3) "Foothold trap" means a commercially manufactured spring-loaded trap with smooth, metallic or rubber soft-catch jaws that close upon an animal's foot.

(4) "Furbearer" means mink, muskrat, beaver, raccoon, opossum, gray fox, red fox, least weasel, long-tailed weasel, river otter, bobcat, coyote, or striped skunk.

(5) "Hunter" means a person legally taking furbearers by means other than trapping.

(6) "Otter Zone 1" means the following counties: Anderson, Ballard, Bath, Boone, Bourbon, Bracken, Breckinridge, Bullitt, Caldwell, Calloway, Campbell, Carlisle, Carroll, Christian, Crittenden, Daviess, Fayette, Fleming, Franklin, Fulton, Gallatin, Grant, Graves, Grayson, Hancock, Hardin, Harrison, Henderson, Henry, Hickman, Hopkins, Jefferson, Kenton, Larue, Livingston, Lyon, Marshall, Mason, McCracken, McLean, Meade, Muhlenberg, Nelson, Nicholas, Ohio, Oldham, Owen, Pendleton, Robertson, Rowan, Scott, Shelby, Spencer, Trigg, Trimble, Union, Webster, and Woodford.

(7) "Otter Zone 2" means all Kentucky counties not included in subsection (6) of this section.

(8) "Snare" means a wire, cable, or string with a knot, loop, or a single piece closing device, the deployment of which is or is not spring-assisted, but any spring-assisted device is not for the purpose of applying tension to the closing device.

(9) "Squaller" means a hand-operated, mouth-operated, or electronic call capable of mimicking the vocalizations of furbearers.

(10) "Trap" means a body-gripping trap, box trap, deadfall, foothold trap, snare, or wire cage trap used to catch furbearers, in the set or unset position.

(11) "Water set" means a trap placed in the water of a river, stream, pond, lake, wetland, or other water course so that a portion of the trap body is underwater.

(12) "Youth" means a person under the age of sixteen (16) by the date of the hunt or the trapping date.

Section 2. License and Permit Requirements. Unless exempted by KRS 150.170, a person shall carry on his or her person a valid:

- (1) Hunting license while hunting furbearers; and
- (2) Bobcat hunting permit while hunting bobcat; or
- (3) Trapping license while trapping furbearers.

Section 3. Furbearer Hunting Seasons. Except as established in 301 KAR 2:049, a person shall only take furbearers by hunting during the seasons established in subsections (1) through (5) of this section:

- (1) Bobcat, from one-half (1/2) hour before sunrise on the third Saturday in November through the last day of February;
- (2) Coyote, year-round;
- (3) Raccoon and opossum, October 1 through the last day of February;
- (4) All other furbearers except as established in subsection (5) of this section, from one-half (1/2) hour before sunrise on the third day of modern gun deer season through the last day of February; and
- (5) Furbearers taken by falconry, September 1 through March 30.

Section 4. Furbearer Trapping Season. Except as established in 301 KAR 2:049, a person shall only take furbearers by trapping from one-half (1/2) hour before sunrise on the third day of the modern gun deer season through the last day of February.

Section 5. License-Exempt Youth Season. For seven (7) consecutive days beginning on the Saturday after Christmas, a youth may hunt or trap furbearers without a license, but all other statewide requirements shall apply.

Section 6. Legal Hunting Equipment. Except as established in Section 7(8) of this administrative regulation, a hunter shall only use the equipment established in subsections (1) through (7) of this section to hunt furbearers:

- (1) Centerfire gun;
- (2) Rimfire gun;
- (3) Shotgun;
- (4) Muzzleloader;
- (5) Bow and arrow;

- (6) Crossbow; or
- (7) An air gun using pellets at least .22 caliber in size.

Section 7. Hunter Restrictions. (1) Furbearers may be taken during daylight hours only, except for the following, which may also be taken after daylight hours:

- (a) Coyote;
- (b) Opossum; or
- (c) Raccoon.
- (2) A person shall not take a raccoon or opossum during daylight hours during the modern gun deer season, as established in 301 KAR 2:172.
- (3) A person hunting from a boat shall not use a light in conjunction with taking a raccoon or opossum.
- (4) A person shall not use the following while chasing a raccoon or opossum from noon on March 1 through September 30:
  - (a) A firearm;
  - (b) Slingshot;
  - (c) Tree climber; or
  - (d) Any device to kill, injure, or force a raccoon or opossum from a tree or den.
- (5) A person may use a squaller year-round.
- (6) There shall not be a closed season on:
  - (a) Chasing red and gray foxes during daylight hours for sport and not to kill; or
  - (b) Chasing raccoons or opossums for sport and not to kill.
- (7) A hunter may use a hand or mouth-operated call, electronic call, or any other attracting device during a furbearer hunting season.
- (8) A person may take a coyote after daylight hours year-round, except that:
  - (a) It shall not be allowed in a county or area where a deer or elk firearm season is open;
  - (b) Artificial light or other means designed to make wildlife visible at night shall only be used from December 1 through March 31, and from May 16 through June 30 on public and private land;~~May 31;~~
  - (c) Any artificial light or other means designed to make wildlife visible at night shall not be connected to or cast from a mechanized vehicle;
  - (d) A holder of a valid Mobility-Impaired Access Permit or Hunting Methods Exemption - Vehicle Permit may use a stationary vehicle as a hunting platform and may cast lights or other means designed to make wildlife visible at night so long as the means used are not connected to the vehicle;
  - (e) On public land, a person shall not use any equipment other than a bow, crossbow, or shotgun and shall not use a shotgun shell with a single-projectile;
  - (f) On private land, a person shall not use any equipment other than a bow, crossbow, or shotgun and shall not use a shotgun shell with a single-projectile, except that from December 1 through March 31 and May 16 through June 30 a person may also use a~~rifle of 6.5mm (.264 caliber) or smaller bullet diameter, a~~ muzzleloader of .54 caliber or less, ~~[or] a shotgun shell with a single projectile, or any modern firearm, including any rifle, pistol, or shotgun loaded from the rear of the barrel.~~

Section 8. Legal Traps. (1) A person who is trapping with a dry land set shall only use traps as established in paragraphs (a) through (e) of this subsection:

- (a) Deadfall;
- (b) Wire cage or box trap;
- (c) Foothold trap with a maximum inside jaw spread of six (6) inches measured perpendicular to the hinges;
- (d) A snare; or
- (e) Except as established in 301 KAR 2:049, a body-gripping trap with a maximum inside jaw spread of seven and one-half (7 1/2) inches measured parallel with the trigger:
  1. In the center of the trap; and
  2. In the unset position.
- (2) There shall be no restrictions on the size or type of trap used as a water set, except that any body-gripping trap greater than twenty (20) inches in width shall be set so that the trap is completely submerged underwater.

Section 9. Trapper Restrictions. (1) A person trapping on private land shall not place traps used as dry land sets any closer than ten (10) feet apart unless possessing written permission from the landowner or the landowner's designee, except that there shall not be more than three (3) traps placed within any ten (10) foot spacing.

- (2) The trap spacing requirement established in subsection (1) of this section shall not apply to:
  - (a) Box or cage live traps; or
  - (b) Properties of five (5) acres or less.
- (3) A trap shall not be set in a trail or path commonly used by a human or a domestic animal.
- (4) A trapper may use lights from a boat or a vehicle in conjunction with trapping furbearers.

Section 10. Trap Tags. (1) Each trap shall have a metal tag attached to it that clearly shows:

- (a) The name and address of the person setting, using, or maintaining the trap; or
- (b) A wildlife identification number issued by the department and the 1-800-25ALERT department hotline phone number.
- (2) A person applying for a wildlife identification number shall apply by:
  - (a) Completing the Wildlife Identification Number for Trap Tags – Application available on the department's Web site at fw.ky.gov; or
  - (b) Calling the department's information center at 1-800-858-1549.
- (3) The following information shall be required for a person to apply for a wildlife identification number:
  - (a) Name;
  - (b) Current home address;
  - (c) Social Security number;
  - (d) Current phone number;
  - (e) Date of birth; and
  - (f) Driver's license number, if available.
- (4) A person shall:
  - (a) Not use a trap tag that has an inaccurate or outdated address;
  - (b) Not use a trap tag that has a wildlife identification number that corresponds to an inaccurate or outdated address or phone number; and
  - (c) Contact the department to provide updated address and phone number.
- (5) A wildlife identification number shall be valid for the life of the holder.

Section 11. Bag Limits. (1) There shall not be a bag limit on furbearers, except as established in subsections (2) through (6) of this section.

- (2) A person shall not take more than five (5) bobcats per season, no more than three (3) of which shall be taken with a gun, except as established in subsection (3) of this section.
- (3) Hunters and trappers may increase their bobcat bag limit for the following season, under the following criteria:
  - (a) A hunter or trapper who submits lower jaws from all harvested bobcats in a single season may receive one (1) additional bobcat to the bag limit for the following season for every two (2) jaws submitted.
  - (b) Additions to the bobcat bag limit also increase the allowable number of bobcats that may be taken with a gun.
  - (c) Hunters and trappers shall submit all lower jaws, from bobcats they harvest during a single season, to the department by March 15th the year the season ends to be eligible for bag limit incentives. Instructions how to remove and submit the lower jaws can be obtained from the department's Web site at fw.ky.gov.
  - (d) Additions of bobcats to bag limits are non-transferable.
- (4) A person shall not take more than ten (10) river otters per season in Otter Zone 1.
- (5) A person shall not take more than six (6) river otters per season in Otter Zone 2.
- (6) The total river otter bag limit per season shall be ten (10) per person, only six (6) of which can be taken from Otter Zone 2.

(7) A falconer hunting within the falconry season, but outside the dates specified in Section 3(3) and (4) of this administrative regulation, shall not take more than two (2) of any furbearer per day.

Section 12. Harvest Recording. (1) Immediately after harvesting a river otter or bobcat, and prior to moving the carcass, a person shall record in writing the:

- (a) Species;
  - (b) Date;
  - (c) County where taken; and
  - (d) Sex of the river otter or bobcat.
- (2) The information required by subsection (1)(a) through (d) of this section shall be documented on:
- (a) The hunter's log section on the reverse side of a license or permit;
  - (b) A hunter's log printed from the department's Web site at fw.ky.gov;
  - (c) A hunter's log available from any KDSS agent; or
  - (d) An index card or similar card.
- (3) A person shall retain and possess the completed hunter's log while hunting or trapping during the current season.

Section 13. Checking a River Otter or Bobcat. (1) A person who harvests a river otter or bobcat shall check each animal by:

(a) Completing the telecheck process after calling 800-245-4263 or completing the check-in process on the department's Web site at fw.ky.gov:

1. Before midnight on the day the river otter or bobcat is recovered;
  2. Prior to processing the carcass; and
  3. Prior to transporting the raw fur, pelt, or unskinned carcass out of Kentucky; and
- (b) Writing the check-in confirmation number on the hunter's log as established in this section.

(2) A person who intends to sell the raw fur of a river otter or bobcat to a licensed fur processor, fur buyer, or taxidermist or wishing to export a river otter or bobcat pelt outside the United States shall:

(a) Contact the department and request a Convention on International Trade of Endangered Species of Flora and Fauna (CITES) tag by providing:

1. A valid check-in confirmation number as established in subsection (1) of this section; and
  2. A street address where the tag is to be mailed; or
- (b) Complete the CITES tag request form on the department's Web site at fw.ky.gov.

(3) A person who is transferring a river otter or bobcat that does not have an attached CITES tag shall attach to the carcass a handmade tag that contains the:

- (a) Confirmation number;
  - (b) Hunter or trapper's name; and
  - (c) Hunter or trapper's phone number.
- (4) A person shall not knowingly provide false information when:
- (a) Completing the hunter's log;
  - (b) Checking a river otter or bobcat;
  - (c) Completing a CITES tag request form; or
  - (d) Creating a handmade carcass tag.

(5) A CITES tag shall be attached to the raw fur, pelt, or unskinned carcass upon receipt of the tag from the department per the instructions provided by the department and remain attached until it is processed or exported outside the United States.

(6) Possession of an unused CITES tag issued by the department shall be prohibited.

Section 14. Transporting and Processing a River Otter or Bobcat. (1) A person shall not sell the raw fur of a river otter or bobcat except to a licensed:

- (a) Fur buyer;
  - (b) Fur processor; or
  - (c) Taxidermist.
- (2) A taxidermist, fur buyer, or fur processor shall:
- (a) Not accept a river otter or bobcat carcass or any part

thereof without a proper carcass tag or CITES tag as established in Section 13 of this administrative regulation; and

(b) Retain the information established in subparagraphs 1. through 4. of this paragraph from a hunter or trapper:

1. Name;
2. Address;
3. Confirmation number or CITES tag number; and
4. Date received for each river otter or bobcat.

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Wildlife Identification Number for Trap Tags – Application", 2014 edition; and

(b) "CITES Tag Request" form, 2014 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Eastern Time.

Approved by the Fish and Wildlife Commission

RICH STORM, Commissioner

APPROVED BY AGENCY: August 16, 2022

FILED WITH LRC: August 16, 2022 at 10:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 29, 2022, at 10:00 a.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 November 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: 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 furbearer hunting and trapping seasons, bag limits, legal methods of take, and other furbearer hunting and trapping requirements.

(b) The necessity of this administrative regulation: This regulation is necessary to provide adequate furbearer hunting and trapping opportunities and to properly manage furbearer populations in Kentucky.

(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, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.175(7), (9) authorizes the department to issue licenses, permits, and tags for hunting and trapping. KRS 150.360 requires restrictions on the taking of wildlife and authorizes the department to promulgate administrative regulations establishing the requirements for hunting coyotes at night. KRS 150.400 authorizes the department to establish the types of traps that can legally be used by trappers. KRS 150.410 authorizes the department to regulate trap tags, trap visitation, and trap placement to protect domestic animals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will fulfill the purposes of KRS 150.025 and 150.410 by defining the seasons, bag limits, and methods of

take used to manage furbearers 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 extend the season for night coyote hunting with modern firearms and use of lights.

(b) The necessity of the amendment to this administrative regulation: This amendment will further increase the efficacy of coyote removal and provide an increased level of hunter opportunity.

(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 legal hunters could pursue coyotes at night with more effective weapons than were allowed in the past. Additionally, farmers and others experiencing coyote nuisance issues can use this amendment to better control coyote numbers and protect their agricultural interests.

(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 may take advantage of an extended season for the use of modern firearms and lights.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to licensed hunters.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Hunters will have more opportunity to pursue coyotes at night.

(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 the department to implement this administrative regulation.

(b) On a continuing basis: There will be no additional 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 any other fees or to increase 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 fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering is not applied because all hunters of coyotes in Kentucky must comply with the requirements of this administrative regulation.

#### 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 Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.175(7), (9) authorizes the department to issue licenses, permits, and tags for hunting and trapping. KRS 150.360 requires restrictions on the taking of wildlife and authorizes the department to promulgate administrative regulations establishing the

requirements for hunting coyotes at night. KRS 150.400 authorizes the department to establish the types of traps that can legally be used by trappers. KRS 150.410 authorizes the department to regulate trap tags, trap visitation, and trap placement to protect domestic animals.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 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 additional revenue will be generated by this administrative regulation during subsequent years.

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

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs 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 (+/-): None; see 3(a) and (b) above.

Expenditures (+/-): None; see 3(b) and (c) above.

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? 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

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate.

(2) State compliance standards.

(3) Minimum or uniform standards contained in the federal mandate.

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

**JUSTICE AND PUBLIC SAFETY CABINET  
Kentucky State Corrections Commission  
(Amendment)**

**500 KAR 10:001. Definitions for 500 KAR Chapter 10.**

RELATES TO: KRS 196.700 - 196.736

STATUTORY AUTHORITY: KRS 15A.160, 196.035, 196.710

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.702 and 196.710 require the Kentucky State Corrections Commission to administer the community corrections grant program. KRS 15A.160 and 196.035 authorize the secretary of the Justice and Public Safety Cabinet to promulgate administrative regulations necessary or suitable for the proper administration of the functions vested in the cabinet or any division in the cabinet. This administrative regulation defines the terms to be used in 500 KAR Chapter 10.

**Section 1. Definitions.**

(1) "Administrator" means the person designated to manage the information involved with the grants awarded under KRS 196.710 and assist the Kentucky State Corrections Commission with its duties.

(2) "Board" means the community corrections board specified in KRS 196.725 or the alternate board described in KRS 196.710(3) approved by the commission to act in the place of a community corrections board.

(3) "Cabinet" is defined by KRS 196.010(1).

(4) "Commission" is defined by KRS 196.700(1).

(5) "Community corrections program plan" or "program plan" is defined by KRS 196.700(3).

(6) "Department" is defined by KRS 196.010(3).

(7) "Eligible applicant" means any local government agency or combination of agencies, private nonprofit, or charitable organization that has an established a community corrections board.

(8) "Fiscal report" means the report submitted on a quarterly basis within the electronic grants management system detailing the fiscal activity of a grant project.

(9) "Grant application" means required information that delineates the programmatic and fiscal proposal of the applicant for the project entered into an electronic grants management system provided by the cabinet.

(10) "Grant funds" means funds awarded by the commission in accordance with KRS 196.710 for implementing a community corrections program plan.

(11) "Grant period" means the period of time the project can incur programmatic and fiscal activity under grant funds.

(12) "Programmatic report" means the report submitted on a quarterly basis within the electronic grants management system detailing the program activity of a grant project.

(13) "Schedule" means an established listing of times and dates for which necessary grant paperwork is due to the commission or the administrator.

(14) "Suspension" means a temporary withholding of payment.

(15) "Termination" means the grant is ended early, and all outstanding funds are withheld.

The Kentucky State Corrections Commission reviewed and approved this administrative regulation on August 25, 2022 prior to its filing by the Justice and Public Safety Cabinet as required by KRS 13A.120(3), 13A.220(6)(a), and 196.704(8).

KERRY HARVEY, Cabinet Secretary and Commission Chairperson

APPROVED BY AGENCY: September 14, 2022

FILED WITH LRC: September 15, 2022 at 11:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 30, 2022, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of

the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, email Justice.RegContact@ky.gov.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the definitions for 500 KAR Chap. 10.

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish uniform definitions for the chapter.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The commission is required to award grants for the implementation and operation of community corrections programs pursuant to 196.710. KRS 15A.160 and 196.035 authorize the secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions vested in the cabinet or any division in the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It complies with the requirement to have administrative regulations and establishes definitions for the operations of the commission in its work.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds new definitions.

(b) The necessity of the amendment to this administrative regulation: The new definitions will provide clarification and assist with amendments to other administrative regulations in the chapter.

(c) How the amendment conforms to the content of the authorizing statutes: The commission is required to award grants for the implementation and operation of community corrections programs pursuant to 196.710. KRS 15A.160 and 196.035 authorize the secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions vested in the cabinet or any division in the cabinet. The definitions apply to the administrative regulations in the chapter.

(d) How the amendment will assist in the effective administration of the statutes: The amendment adds definitions for better understanding within the chapter.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately thirty or more governments or organizations applying for or awarded grants by the commission. This affects the Department of Corrections administrative staff that assist the commission.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities applying for grants will have to understand the definitions and how they apply in the application requirements. Those awarded grants will have to understand the definitions and how they apply to handling money awarded and reporting requirements. Administrative staff will have to perform their work using the revised definitions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The definitions are not expected to involve any cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities and individuals will

better understand the other administrative regulations in the chapter.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A funding source is not needed for establishing definitions.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees are not established or increased in this administrative regulation.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

#### FISCAL NOTE

(1) What 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 amendments to this administrative regulation impact the Department of Corrections and Justice and Public Safety Cabinet. This also impacts approximately thirty or more governments or organizations applying for or awarded grants by the commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.160, 196.035, 196.700-735

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? Establishing definitions does not generate revenue.

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

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

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

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? Establishing definitions does not generate cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Establishing definitions does not generate cost savings.

(c) How much will it cost the regulated entities for the first year? No cost is anticipated by establishing definitions.

(d) How much will it cost the regulated entities for subsequent years? No cost is anticipated by establishing definitions.

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 is not expected to have a major economic impact.

#### JUSTICE AND PUBLIC SAFETY CABINET Kentucky State Corrections Commission (Amendment)

#### 500 KAR 10:020. Administration and application procedure for community corrections grant program.

RELATES TO: KRS 196.700 - 196.736

STATUTORY AUTHORITY: KRS 15A.160, 196.035, 196.710

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.702 and 196.710 require the Kentucky State Corrections Commission to administer the community corrections grant program. KRS 15A.160 and 196.035 authorize the secretary of the Justice and Public Safety Cabinet to promulgate administrative regulations necessary or suitable for the proper administration of the functions vested in the cabinet or any division in the cabinet. This administrative regulation establishes the application process and administrative procedures for the community corrections grant programs.

#### Section 1. Application Process.

(1) The administrator shall notify eligible applicants of the availability of grant funds, requirements of the program, grant application format, and deadline for receiving applications by Web site postings and sending notices to organizations that communicate with county governments and judicial organizations[each county government and judicial circuit].

(2) The grant program requirements may be reviewed in full at the Justice and Public Safety Cabinet Web site under the Grants Management Division[Branch] and Kentucky State Corrections Commission grants.

(3) An applicant shall:

(a) Develop a community corrections program plan in compliance with KRS 196.720;

(b) Have:

1. A community corrections board established and functioning pursuant to KRS 196.725; or

2. An alternate board as described in KRS 196.710(3). If an applicant seeks to operate its community corrections program with oversight by an alternate board instead of a community corrections board pursuant to KRS 196.710(3), it shall operate under the following requirements in KRS 196.725:

a. The board shall provide direction and assistance to the community corrections program in the design, implementation and evaluation of the community corrections program plan;

b. The board members shall not receive compensation for their duties as board members, but this shall not include the normal salary received by an employee if the employee is not hired to be a board member;

c. The board shall be subject to the open meetings law, KRS 61.800 et seq., for any discussion or decision concerning the community corrections program, plan, or grant;

d. The board shall be subject to the open records law, KRS 61.870 et seq., for any records concerning the community corrections program, plan, or grant;

e. The board shall meet on a regular basis; and

f. Its duties shall include duties (1) through (4) as stated in KRS 196.725; and

(c) Submit a completed application through the electronic grant management system used by the cabinet on the Justice and Public Safety Cabinet Web site under the Grants Management Division[Branch] and Kentucky State Corrections Commission



grants.

(4) The community corrections program plan shall include:

(a) A project overview containing a description of the population~~[cities and counties]~~ to be served and the general format of the programs;

(b) A projected budget detailing the manner in which the funds will be expended;

(c) Any local funds or contributions allocated to the development and implementation of the program plan; and

(d) Letters of certification of need and support from the circuit judge, Commonwealth attorney, and the chief executive officer of the governmental unit.

(5) The community corrections program plan shall be approved by the board before an application is submitted.

(6) The application shall include:

(a) The community corrections program plan;

(b) 1. Records showing the creation of the community corrections board with meeting minutes; or

2. Request for approval of alternate board by commission;

(c) The following information for the board:

1. A list of board members and their area of representation, for example: crime victim, community leader;

2. Board meeting schedule;

3. Articles of incorporation, unless the board is an alternate board that is not incorporated; and

4. A letter of good standing for the corporation from the Secretary of State, unless the board is an alternate board that is not incorporated;

(d) A description of the function and operation of the board, for an alternate board;

(e) Contact information;

(f) A project narrative;

(g) The specific objectives and operations of the proposed project;

(h) Performance indicators;

(i) A proposed budget narrative;~~[-and]~~

(j) A detailed proposed budget summary for personnel, contractual services, travel, training, and operating expenses; and

(k) Supporting documentation as required within the application.

Section 2. Eligibility Requirements. The following programs shall be eligible to apply for funding pursuant to KRS 196.705:

(1) Victim restitution;

(2) Community service work;

(3) Home confinement;

(4) Electronic monitoring;

(5) Drug and alcohol counseling program;

(6) Day reporting centers; and

(7) Other programs that are for a purpose outlined in KRS 196.705.

Section 3. Funds Restrictions. Grant funds shall be used for the development and implementation of new or enhanced programs and services for the targeted offenders. The funds shall not be used to supplant funds previously committed to the programs and services by local or state government.

(1) Grant funds shall not be used in a manner prohibited by KRS 196.730 for jail operations or confinement, the renovation or construction of jail facilities, or the acquisition of land.

(2) Grant funds shall be disbursed according to a schedule determined by the commission~~[on a quarterly basis]~~, but the grant recipient~~[board]~~ shall not spend any funds unless services have been rendered.

Section 4. Award Procedure.

(1) The administrator shall forward copies of the grant applications to the commission who shall meet and determine which applications will be awarded grants at least thirty (30) days before the start of the funding cycle~~within 100 days of the grant application deadline~~.

(2) The commission shall make its decision based on:

(a) The requirements in KRS 196.710;

(b) Assessment of the proposed program's ability to meet the

purposes of community corrections programs stated in KRS 196.705;

(c) Strength of proposed program plan, including project overview and proposed budget;

(d) If applicable, whether grant requirements were met for a previous grant, including the proper submission of quarterly reports;

(e) An area of specific grant focus determined by the commission, if any; and

(f) Other factors of similar importance in assessing the strength of an application.

(3) The administrator shall notify the recipient in writing of a grant decision within five (5) days~~[award within two (2) weeks]~~ of the decision.

(4) Grants shall be made on a year-to-year basis with consideration for continued funding after review of submitted progress and performance of the current program, as well as any audit findings~~[reports and audit reports]~~. Funding shall not be provided to a program, which has failed to demonstrate:

(a) An effective sentencing alternative to incarceration by demonstrating positive outcomes;

(b) Successful program completions;

(c) Lower~~[Low]~~ arrest and supervision revocation rates;

(d) Cost savings in fewer days incarcerated; or

(e) Other positive outcomes supporting KRS 196.702(4).

(5) Reconsideration.

(a) An applicant may request reconsideration for a decision to deny a grant award for misinterpretation of facts contained in the original application.

(b) An applicant shall not request reconsideration for any other matter.

(c) After notification by the administrator of the grant decision, the applicant may file a reconsideration request in writing with the grant administrator within five (5) business days after the notice of the grant decision in the grants management system. Requests for reconsideration shall be submitted to Department of Corrections, Attn: State Corrections Commission Grant Administrator, P.O. Box 2400, Frankfort, Kentucky 40602-2400.

(d) The chair of the commission or designee shall review the reconsideration request and shall provide a written decision within thirty (30) days. The decision shall be final.

The Kentucky State Corrections Commission reviewed and approved this administrative regulation on August 25, 2022 prior to its filing by the Justice and Public Safety Cabinet as required by KRS 13A.120(3), 13A.220(6)(a), and 196.704(8).

KERRY HARVEY, Cabinet Secretary and Commission Chairperson

APPROVED BY AGENCY: September 14, 2022

FILED WITH LRC: September 15, 2022 at 11:45 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 30, 2022 at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, email Justice.RegContact@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the grant application process, eligibility for grants, and award process to award grants for the implementation and operation of community corrections programs pursuant to 196.710.

(b) The necessity of this administrative regulation is: This administrative regulation is needed to establish the grant application process and its management for community corrections programs pursuant to 196.710.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The commission is required to award grants for the implementation and operation of community corrections programs pursuant to 196.710. KRS 196.704(8) requires the commission to promulgate administrative regulations for the operating procedures of the commission. KRS 15A.160 and 196.035 authorize the secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions vested in the cabinet or any division in the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It complies with the requirement to have administrative regulations and establishes the grant application process and its management for community corrections programs pursuant to 196.710.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes terminology throughout the regulation. It adds a requirement for a detailed proposed budget summary to be included in the application. It updates time frames for grant disbursement, for the commission to receive applications, and for notification of recipients. It also adds a procedure for requesting reconsideration. The administrative regulation is almost totally rewritten. It establishes the online application process, the requirements to apply for a grant, and the standards for review of an application.

(b) The necessity of the amendment to this administrative regulation: The amendment follows the requirements of the statutes and allows the online grant process used at the cabinet to be standardized for community corrections program grants.

(c) How the amendment conforms to the content of the authorizing statutes: The commission is required to award grants for the implementation and operation of community corrections programs pursuant to 196.710. KRS 196.704(8) requires the commission to promulgate administrative regulations for the operating procedures of the commission. KRS 15A.160 and 196.035 authorize the secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions vested in the cabinet or any division in the cabinet.

(d) How the amendment will assist in the effective administration of the statutes: It clarifies the grant application process by providing directions that are more specific for grant applicants. In addition, it provides guidance on factors reviewed in the grant selection process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately thirty or more governments or organizations applying for or awarded grants by the commission. The Department of Corrections (DOC) provides assistance to the commission for the grant application process. Justice and Public Safety Cabinet Grants Management Division staff manage the online application platform.

(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 applying for grants must apply using the online application process, provide necessary information, and show compliance with other application

requirements. DOC administrative staff for the commission provides notice of available funds, program requirements, application format, and submission deadlines. Once applications are submitted, administrative staff review and present the applications to the commission for the selection process.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The application process does not have a fee. Community corrections board preparations prior to application may include administrative costs related to the application process. The cost to the applicants depends on the amount of time spent on preparation of the application and the cost of compensation for the applicant's staff. DOC administrative staff spends approximately eighty hours preparing notifications and reviewing the applications for a cost of \$2,500.00.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The applicant may be awarded a grant to operate a community corrections program.

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

(a) Initially: Cost to the applicants depends on the amount of time dedicated by the applicant in preparing the application. DOC administrative staff dedicates approximately forty hours resulting in a cost of \$1,250.00.

(b) On a continuing basis: Changes to the software for the online application process is expected to require fifteen to twenty hours of Justice and Public Safety Cabinet Grants Management Division staff time at approximately \$900-\$1,200.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The commission grant funds as allocated through the General Assembly will serve as the source of funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees are not established or increased in this administrative regulation.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

## FISCAL NOTE

(1) What 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 impacts approximately thirty or more governments or organizations applying for or awarded grants by the commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.160, 196.035, 196.704, 196.710

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

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

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

(c) How much will it cost to administer this program for the first year? \$643,500 is anticipated for grant funds for FY23. In addition, there are salary costs incurred by the Department as a staff member administers the program.

(d) How much will it cost to administer this program for subsequent years? Grant funds may be increased by the General

Assembly. Annual salary costs are incurred by the Department as a staff member administers the program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(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? Receiving grant funds from the community corrections grant program may provide cost savings to regulated entities by funding services, which provide an alternative to incarceration decreasing costs associated with incarceration and increasing program completion rates. Examples of services may include substance abuse treatment, mental health treatment, housing assistance, transportation services, hygiene, and health prevention efforts. Provision of grant funds allows agencies to maximize other funding sources to enhance overall services provided, such as program capacity or provision of additional services. Expanded programming/services for participants reduces costs associated with unsuccessful program participation, often necessitating repeat program participation. Further, provision of services reduces medical/social service needs that communities incur (such as continued substance use, homelessness, medical treatment, etc.). Overall, estimated cost savings is indeterminable.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Receiving grant funds from the community corrections grant program may provide cost savings to regulated entities by funding services which provide the same preventative cost avoidance in subsequent years.

(c) How much will it cost the regulated entities for the first year? Cost to the applicants depends on the amount of time dedicated by the applicant in preparing the application.

(d) How much will it cost the regulated entities for subsequent years? There is no cost incurred for regulated entities for subsequent years because the application has been completed previously.

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 is not expected to have a major economic impact.

**JUSTICE AND PUBLIC SAFETY CABINET  
Kentucky State Corrections Commission  
(Amendment)**

**500 KAR 10:030. Community Corrections Board and grant recipient requirements.**

RELATES TO: KRS 196.700 - 196.736

STATUTORY AUTHORITY: KRS 15A.160, 196.035, 196.710, 196.725

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.702 and 196.710 require the Kentucky State Corrections Commission to administer the community corrections grant program. KRS 15A.160 and 196.035 authorize the secretary of the Justice and Public Safety Cabinet to promulgate administrative regulations necessary or suitable for the proper administration of the functions

vested in the cabinet or any division in the cabinet. This administrative regulation establishes the procedures and reporting requirements for a Community Corrections Board or alternate board pursuant to KRS 196.725 and KRS 196.710(3)

**Section 1. Meetings and Duties.**

(1) The board shall meet at least quarterly to review the status of:

- (a) The goals stated in KRS 196.702(4);
  - (b) The board's grant application for Community Corrections funding;
  - (c) Expenditures and revenue for each awarded grant; and
  - (d) Operation of the community corrections program plan.
- (2) The board shall obtain the audit required by KRS 196.725.

**Section 2. Reporting Requirements.**

(1) The board shall review and approve a report before it is submitted to the administrator or commission. The board shall submit progress reports at least quarterly detailing program and fiscal information for the period to the administrator in a format approved by the commission. The format for the report, report deadlines, and other requirements for the report shall be posted in the grant requirements on the ~~[Justice and Public Safety Cabinet website under the Grants Management Division and ]~~Kentucky State Corrections Commission grants Web site at <https://justice.ky.gov/Boards-Commissions>. The report shall include the:

- (a) Number of participants served during period with the type of service received;
- (b) Number successfully completing the program during the period;
- (c) Number of unsuccessful participants;
- (d) Number of incarceration days avoided;
- (e) Number of participants with new arrests or revocations;
- (f) Amount expended during the period for:
  - 1. Personnel;
  - 2. Contract services;
  - 3. Travel;
  - 4. Training;
  - 5. Operating expenses; and
  - 6. Equipment;
- (g) Total amount expended for the period;
- (h) Remaining balance of the grant; and
- (i) The progress toward expending the award prior to the end of the award.

(2) ~~[A grant recipient may request a budget modification from the commission by sending the request to the administrator. A deviation from the approved plan or budget shall not be implemented until the commission approves the budget modification and the modification has been processed through the Justice and Public Safety Cabinet grants management system.]~~

~~{3}~~ If the audit addressed in 500 KAR 10:040 has not been completed when the submission for final disbursement of funds for the grant is made, the board shall provide with the submission a letter certifying that it has reviewed the expenditures for the grant and that they have been expended in compliance with the grant requirements.

**Section 3. Grant Award Modification.**

(1) A grant award modification request shall require approval by the commission prior to the expenditure of funds by the recipient. A budget modification that significantly changes a project's goals or objectives shall not be approved.

(2) A budget modification and justification for the grant award modification shall be submitted to the administrator fifteen (15) days prior to the end of the month for which it is being requested. After review, the administrator shall direct the grantee to submit the grant award modification request within the cabinet's electronic grants management system. The chair of the commission may approve a grant modification between commission meetings. A budget modification request and action shall be reported to the commission.

(3) Any deviation from the approved budget without prior approval may result in the disallowance of the expenditure and

deobligation of the remaining funds. A grant award modification shall not be retroactive without specific approval from the commission.

The Kentucky State Corrections Commission reviewed and approved this administrative regulation on August 25, 2022 prior to its filing by the Justice and Public Safety Cabinet as required by KRS 13A.120(3), 13A.220(6)(a), and 196.704(8).

APPROVED BY AGENCY: September 14, 2022

FILED WITH LRC: September 15, 2022 at 11:45 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 30, 2022 at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, email Justice.RegContact@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures and reporting requirements for a Community Corrections Board or alternate board pursuant to KRS 196.725 and 196.710(3).

(b) The necessity of this administrative regulation is: This administrative regulation complies with the requirements of KRS 196.725 and 196.710(3).

(c) How this administrative regulation conforms to the content of the authorizing statutes: The commission is required to award grants for the implementation and operation of community corrections programs pursuant to 196.710. KRS 196.704(8) requires the commission to promulgate administrative regulations for the operating procedures of the commission. KRS 15A.160 and 196.035 authorize the secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions vested in the cabinet or any division in the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the procedures and reporting requirements for a Community Corrections Board or alternate board pursuant to KRS 196.725 and 196.710(3) for compliance with grant management 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: The amendment adds the Kentucky State Corrections Commission's website address and rewrites the grant modification process.

(b) The necessity of the amendment to this administrative regulation: The commission is required to award grants for the implementation and operation of community corrections programs pursuant to 196.710. KRS 196.704(8) requires the commission to promulgate administrative regulations for the operating procedures of the commission. KRS 15A.160 and 196.035 authorize the secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions vested in the cabinet or any division in the cabinet.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes the

procedures and reporting requirements for a Community Corrections Board or alternate board pursuant to KRS 196.725 and 196.710(3).

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides detailed meeting and reporting requirements for a Community Corrections Board or alternate board pursuant to KRS 196.725 and 196.710(3) for compliance with grant management requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately thirty or more governments or organizations applying for or awarded grants by the commission, the Justice and Public Safety Cabinet, and the Department of Corrections (DOC).

(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 boards will have to comply with the detailed meeting and reporting requirements for grant awards. DOC administrative staff review reports to ensure requirements have been met and collaborate with the Justice and Public Safety Cabinet Grants Management Division if a budget modification is requested by a grantee.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Grantees are required to track and provide specific information each quarter. Grantee administrative duties are typically included within a grant program budget. Over the course of approximately eighty hours, DOC administrative staff reviews reporting information provided by grantees and provides it to the commission. This review process roughly equates to \$2,500.00. DOC administrative staff also collaborates with the Justice and Public Safety Cabinet Grants Management Division if a budget modification is requested by a grantee. Time spent in collaboration between the Department of Corrections and the Justice and Public Safety Cabinet has the potential to cost \$2,500.00 or more, which is the approximate compensation for forty hours each for two staff.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The board may be eligible for continued grant funding and future grant awards.

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

(a) Initially: The cost to an applicant depends on the amount of time dedicated by the grantee. Cost to compensate administrative staff is allotted within the allocated funds. DOC administrative staff cost to assist the commission with the tasks that are part of this administrative regulation is anticipated to be approximately \$1,250.00.

(b) On a continuing basis: Additional costs to grantees may accrue if the need for corrections or modifications arise after the review of grantee reports. It is estimated that ten to fifteen percent of the program oversight staff time is dedicated to tracking outcome measures and compiling reports as required by the commission.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds allocated by the legislature to the commission.

(7) Provide an assessment of whether an 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 to implement the administrative regulation amendment is not anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees are not established in this administrative regulation.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

## FISCAL NOTE

(1) What 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 impacts approximately thirty or more governments or organizations applying for or awarded grants by the commission. Along with applicants, this regulation affects Department of Corrections (DOC) administrative staff. DOC administrative staff review reports to ensure requirements have been met. Additionally, Department of Corrections administrative staff will collaborate with the Justice and Public Safety Cabinet Grants Management Division if a budget modification is requested by a grantee.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.160, 196.035, 196.704, 196.710

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

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

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

(c) How much will it cost to administer this program for the first year? \$643,500 is anticipated for grant funds for FY23. In addition, there are salary costs incurred by the Department as a staff member administers the program.

(d) How much will it cost to administer this program for subsequent years? Grant funds may be increased by the General Assembly. Annual salary costs are incurred by the Department as a staff member administers the program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(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? Receiving grant funds from the community corrections grant program may provide cost savings to regulated entities by funding services, which provide an alternative to incarceration decreasing costs associated with incarceration and increasing program completion rates. Examples of services may include substance abuse treatment, mental health treatment, housing assistance, transportation services, hygiene, and health prevention efforts. Provision of grant funds allows agencies to maximize other funding sources to enhance overall services provided, such as program capacity or provision of additional services. Expanded programming/ services for participants reduces costs associated with unsuccessful program participation, often necessitating repeat program participation. Further, provision of services reduces medical/social service needs that communities incur (such as continued substance use, homelessness, medical treatment, etc.). Overall, estimated cost savings is indeterminable.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Receiving grant funds from the community corrections grant program may provide cost savings to regulated entities by funding services which provides the same preventative cost avoidance in subsequent years.

(c) How much will it cost the regulated entities for the first year? There is no cost incurred for regulated entities under this regulation.

(d) How much will it cost the regulated entities for subsequent years? There is no cost incurred for regulated entities under this

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 is not expected to have a major economic impact.

## JUSTICE AND PUBLIC SAFETY CABINET Kentucky State Corrections Commission (Amendment)

### 500 KAR 10:040. Program review.

RELATES TO: KRS 196.700 - 196.736

STATUTORY AUTHORITY: KRS 15A.160, 196.035, 196.710

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.735 requires the Kentucky State Corrections Commission to evaluate each community corrections program on an annual basis. KRS 15A.160 and 196.035 authorize the secretary of the Justice and Public Safety Cabinet to promulgate administrative regulations necessary or suitable for the proper administration of the functions vested in the cabinet or any division in the cabinet. This administrative regulation provides for review of the community corrections program.

#### Section 1. Review Process.

(1) During each fiscal year, the administrator shall inspect and examine the fiscal and program records of each grant to determine compliance with the program plan and prepare a compilation of the reports for the commission. The administrator shall provide the compilation and the grant reports each quarter to the commission.

(2) Each fiscal year, the administrator shall compile the grant program results into an annual report. The commission shall review this report and may adopt all or portions of it for the annual evaluation required by KRS 196.735.

Section 2. Programmatic and Fiscal Reports. (1) A grant recipient shall file a programmatic report and fiscal report regarding activity for the preceding period on a schedule provided in writing to a grant recipient by the administrator. Information for the programmatic and fiscal reports shall be input into the online electronic grants management system.

(a) The fiscal report shall outline the grant funds expended for the reporting period, including:

1. The total grant award;

2. The amounts expended in the reporting period.

Expenditures shall be listed by budget category, including:

a. Personnel:

(i) Gross salary;

(ii) Fringe benefits; and

(iii) Employer costs;

b. Contractual services;

c. Travel;

d. Training;

e. Equipment costs; or

f. Operating expenses.

3. The balance of remaining grant funds for the grant cycle;

(b) The program report shall outline program outcomes for the reporting period, including:

1. Number of new program participants and total number of grant participants served;

2. Number of successful program completions and unsuccessful discharges from the program, with average length of time in the program;

3. Number and type of program violations incurred;  
4. Number and type of program services received;  
5. Amount of restitution or child support paid by participants;  
6. Participation in community service;  
7. Number of drug tests administered with aggregate results;  
8. Number of participant referrals to other agencies for services;  
9. Participant demographics; and  
10. Any other relevant information about program operation during the reporting period.

(2) The grantee shall maintain individual client files. Information supplied to the commission for report or statistical purpose shall be by client identification number or client initials.

(3) All records shall be retained in accordance with the retention schedule for Kentucky State Agencies published by the State Libraries, Archives, and Records Commission.

### Section 3. Additional Information.

(1) A grantee shall present the progress of its program and oversight by the board to the commission at its meeting upon request.

(2) The administrator shall obtain an annual independent audit of each grant recipient. The administrator shall provide a summary of the audit results to the commission.

### Section 4. ~~Section 3.~~ Compliance Issues.

(1) If the administrator determines that there is reasonable cause to believe that a program or facility is not in substantial compliance with current requirements of the grant, or the program plan under which it was funded,

(a) The administrator may:

1. Investigate compliance;

2. Request additional supporting documentation;

3. Engage in additional monitoring; or

4. Take other actions as needed to determine compliance; and

(b) A notice of the findings concerning compliance shall be submitted to the commission.

(2) If information concerning a compliance issue is received and the chair of the commission determines that there is a significant risk of dissipation of funds, the chair may suspend all or any portion a grant until the commission meets and considers the matter.

(3) The commission may suspend all or any portion of a grant or revoke the grant if it is determined by the commission that the board is not in substantial compliance or has not made satisfactory progress in achieving substantial compliance.

[a] Suspension.

[a][1-] Notice of the suspension shall be sent in writing to the grant recipient and board within five (5) business days of the decision to suspend funds.

[b][2-] The notice shall identify specific ~~provide specific actions for the grant recipient to correct~~ deficiencies and corrective steps necessary for the grant recipient to demonstrate ~~during the suspension and address~~ compliance with the grant requirements.

[c][3-] The grant recipient shall provide a corrective action plan to correct deficiencies during the suspension.

[d] The grant recipient shall provide ~~progress~~ reports as indicated in the suspension notice to the administrator.

[e][4-] The administrator shall monitor the grant recipient's progress in correcting the deficiencies and shall provide a report to the commission of the grant recipient's progress.

[f][5-] The commission shall review the grant recipient's progress as soon as practicable, but not more than ~~120~~ ninety (90) days, after the sending of the report by the administrator to determine whether to:

1. [a.] Continue the suspension with instructions to the grant recipient concerning correction of the deficiencies;

2. [b.] End the suspension and resume the grant funding because the grant recipient has:

a. [(i)] Sufficiently corrected the deficiencies; or

b. [(ii)] Put into place satisfactory steps to achieve compliance within a reasonable time; or

3. [c.] Revoke the grant recipient's funding for that fiscal year.

### Section 5. Termination of Grant Program.

(1) The commission shall terminate project funding for the following reasons:

(a) The application was made under false pretenses or information;

(b) The applicant is mishandling grant funds;

(c) The applicant is noncompliant with award conditions;

(d) The applicant fails to comply with reporting requirements; or

(e) The applicant is unable to carry out the project as described in the application.

(2) If the commission decides to revoke funding:

(a) The administrator shall notify the grant recipient and board in writing within five (5) business days specifying the reason for the revocation and giving the grant recipient a reasonable time to close out the grant or seek funding from other sources.

(b) Additional funds shall not be dispersed to the grant recipient for that fiscal year; and

(c) The commission may require the return of unexpended grant monies.

### Section 6. Review Request.

(1) A grantee may request a review of the finding to suspend or revoke grant funding by filing a request in writing with the grant administrator no later than five (5) business days after receipt of the finding.

(a) A request for review shall be limited to consideration of information only if it appears that a material fact was overlooked or misinterpreted.

(b) A grant recipient shall not request review for any other matter.

(c) Requests for review shall be submitted to Department of Corrections, Attn: State Corrections Commission Grant Administrator, P.O. Box 2400, Frankfort, Kentucky 40602-2400.

(2) The chair of the commission or designee shall review the request and issue a written decision within thirty (30) days. The decision shall be final.

### Section 7. End of Grant Close Out.

(1) Once the grant period expires or a project is terminated, the grantee shall submit a final fiscal report and programmatic report detailing activity for the entire grant period. The administrator shall provide the grantee a due date for the final reports for the grant period. The due date shall not surpass thirty (30) days after the grant period expiration or termination of funds.

(2) The project shall remain subject to an audit of the grant expenditures for that fiscal year.

(3) The commission may require the return of unexpended grant monies.

(a) If the grant recipient is instructed to return unexpended grant funds, the grant recipient shall provide a check made payable to the Kentucky State Treasurer as soon as practicable, but no later than thirty (30) days after receipt of the notice.

(b) If the grant recipient does not return funds as requested, the grantee may be subject to the following actions:

1. Withholding of future awards for the project, program, or board; or

2. Other actions that may be legally available, including civil remedies.

[(b) Revocation. If the commission decides to revoke funding:

1. a. The administrator shall provide written notice to the grant recipient and board within seven (7) days; and

b. Additional funds shall not be dispersed to the grant recipient for that fiscal year; and

2. The commission may require the return of unexpended grant monies.

(4) If the grant recipient is instructed to return the unexpended funds, the grant recipient shall provide a check made payable to the Kentucky State Treasurer as soon as practicable, but not later than thirty (30) days, after receipt of the notice.]

The Kentucky State Corrections Commission reviewed and approved this administrative regulation on August 25, 2022 prior to its filing by the Justice and Public Safety Cabinet as required by KRS 13A.120(3), 13A.220(6)(a), and 196.704(8).

KERRY HARVEY, Cabinet Secretary and Commission Chairperson

APPROVED BY AGENCY: September 14, 2022

FILED WITH LRC: September 15, 2022 at 11:45 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 30, 2022 at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, email Justice.RegContact@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for review of the community corrections programs and grant awards for compliance with KRS 196.710.

(b) The necessity of this administrative regulation is: This administrative regulation is needed to establish the review process for grants and compliance with the statutes for board actions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The commission is required to award grants for the implementation and operation of community corrections programs pursuant to 196.710. KRS 196.704(8) requires the commission to promulgate administrative regulations for the operating procedures of the commission. KRS 15A.160 and 196.035 authorize the Secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions vested in the cabinet or any division in the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It complies with the requirement to have administrative regulations and establishes the review process for grants and board 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: The amendment adds a section for program and fiscal reports. It adds options for an administrator when a program or facility is not in compliance. It also adds requirements for notification of suspension and a correction plan. It also adds a section for termination of a grant program.

(b) The necessity of the amendment to this administrative regulation: It provides detailed instructions for the review process to ensure compliance with the statutes and administrative regulations.

(c) How the amendment conforms to the content of the authorizing statutes: The commission is required to award grants for the implementation and operation of community corrections programs pursuant to 196.710. KRS 196.704(8) requires the commission to promulgate administrative regulations for the operating procedures of the commission. KRS 15A.160 and 196.035 authorize the secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions vested in the cabinet or any division in the cabinet.

(d) How the amendment will assist in the effective administration of the statutes: It makes the review process clearer.

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

administrative regulation: This affects approximately thirty or more governments or organizations applying for or awarded grants by the commission, the Justice and Public Safety Cabinet, and the Department of Corrections (DOC).

(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 boards and grantees will have to follow the meeting and reporting requirements. The DOC administrator assigned to the commission spends approximately forty hours to review program and fiscal aspects of submitted quarterly reports to ensure grantees are in compliance. The DOC administrator also notifies grantees of non-compliance issues and compiles and presents grantee program and fiscal reports to the commission.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to an applicant to meet reporting requirements depends on the amount of time dedicated by the applicant. Applicant time spent collecting required documentation is unpredictable. DOC administrative staff for the commission dedicates approximately eighty hours to inspection of program and fiscal aspects of submitted quarterly reports to ensure grantees are in compliance. Further time is spent seeking corrections and additional information from grantees if reporting is not sufficient (approximately twenty hours). In total, the administrator dedicates approximately 50% of the administrator's time toward the compliance of this regulation over the course of the fiscal year.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Grant awards will be more transparent.

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

(a) Initially: Approximately two grantee staff dedicate eighty hours per quarter in providing oversight for grantee compliance and report compliance. This results in costs of approximately \$5,000.00. Annual audit costs by a certified public accountant are approximately \$15,400.00 and is paid from part of the allocation by the General Assembly. The majority of grantee reporting time is focused on audit requirements and gathering financial and programmatic records to compile reports. If non-compliance issues occur, the corresponding time to correct may arise over the course of two weeks resulting in a possible cost of approximately \$2,500.00. The DOC administrator for the commission dedicates approximately 100 hours toward the compliance of this regulation resulting in cost of \$3,125.00. The DOC administrator costs listed in question (4)(b) are expected to continue.

(b) On a continuing basis: Annual training of grantees is anticipated. The DOC administrator for the commission arranges the meeting, communicates with attending grantees, and compiles handouts. Annual salary costs are incurred by the Department as a staff member administers the program. An estimated cost for grantee time and travel is included in grant funds.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds allocated by the legislature to the commission.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees are not established or increased in this administrative regulation.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

#### FISCAL NOTE

(1) What 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 impacts approximately thirty or more governments or organizations applying for or awarded grants by the commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.160, 196.035, 196.710

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

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

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

(c) How much will it cost to administer this program for the first year? \$643,500 is anticipated for grant funds for FY23. In addition, there are salary costs incurred by the Department as a staff member administers the program.

(d) How much will it cost to administer this program for subsequent years? Grant funds may be increased by the General Assembly. Annual salary costs are incurred by the Department as a staff member administers the program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(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? Receiving grant funds from the community corrections grant program may provide cost savings to regulated entities by funding services, which provide an alternative to incarceration decreasing costs associated with incarceration and increasing program completion rates. Examples of services may include substance abuse treatment, mental health treatment, housing assistance, transportation services, hygiene, and health prevention efforts. Provision of grant funds allows agencies to maximize other funding sources to enhance overall services provided, such as program capacity or provision of additional services. Expanded programming/services for participants reduces costs associated with unsuccessful program participation, often necessitating repeat program participation. Further, provision of services reduces medical/social service needs that communities incur (such as continued substance use, homelessness, medical treatment, etc.). Overall, estimated cost savings is indeterminable.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Receiving grant funds from the community corrections grant program may provide cost savings to regulated entities by funding services which provides the same preventative cost avoidance in subsequent years.

(c) How much will it cost the regulated entities for the first year? There is no cost incurred for regulated entities under this regulation.

(d) How much will it cost the regulated entities for subsequent years? There is no cost incurred for regulated entities under this 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 is not expected to have a major economic impact.

## JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amendment)

### 501 KAR 6:050. Luther Luckett Correctional Complex.

RELATES TO: KRS 72.020, 72.025(5), Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Luther Luckett Correctional Complex.

Section 1. Incorporation by Reference. (1) "Luther Luckett Correctional Complex policies and procedures", September 14, 2022~~[November 10, 2015]~~, are incorporated by reference. Luther Luckett Correctional Complex Policies and Procedures include:

LLCC 02-05-03	Inmate Canteen Committee (Amended 9/14/22[5/15/12])
LLCC 02-05-05	Inmate Canteen (Amended 9/14/22[5/15/12])
LLCC 02-06-01	Inmate Control of Personal Funds (Amended 9/14/22[5/15/12])
LLCC 02-06-02	Storage and Disposition of Monies Received on Weekends, Holidays and between 4 p.m. and 8 a.m. Weekdays (Amended 9/14/22[5/15/12])
LLCC 05-02-02	Outside Consultation and Research (Amended 9/14/22[5/15/12])
LLCC 06-01-01	Offender Information (Amended 9/14/22[10/14/15])
LLCC 06-02-01	Open Records (Amended 9/14/22[5/15/12])
LLCC 08-04-01	Fire Safety (Amended 9/14/22[7/10/12])
LLCC 09-14-02	Procedures[Guidelines] for Contractors (Amended 9/14/22[7/10/12])
LLCC 09-18-01	Search Plan (Amended 9/14/22 [5/15/12])
LLCC 09-18-03	Contraband Control: Collection, Preservation, Disposition of Contraband, and Identification of Physical Evidence (Amended 9/14/22[5/15/12])
LLCC 09-25-01	Procedure for Maintaining Current Inmate Photographs (Amended 9/14/22[11/14/14])
LLCC 09-29-01	Inmate Death (Amended 9/14/22 [7/10/12])
LLCC 10-01-01	Special Management Housing[Inmates] (Amended 9/14/22[11/10/15])
LLCC 11-01-01	Dining Room Rules [Guidelines] (Amended 9/14/22[8/7/15])
LLCC 11-02-01	Food Services: Security (Amended 9/14/22[5/15/12])
LLCC 11-03-01	Food Services: General Requirements[Guidelines] (Amended 9/14/22[5/15/12])
LLCC 11-04-01	Food Services: [Service]Meals (Amended 9/14/22[5/15/12])
LLCC 11-04-02	Food Services[Service]: Menu, Nutrition and Special Diets (Amended 9/14/22[5/15/12])
LLCC 11-05-02	Health Requirements of Food Handlers (Amended 9/14/22[5/15/12])



LLCC 11-06-01	Food Services: Inspections and Sanitation (Amended 9/14/22[11/10/15])
<del>LLCC 11-07-01</del>	<del>Food Services: Purchasing, Storage and Farm Products (Amended 5/15/12)</del>
LLCC 12-01-01	Sanitation, Living Condition Standards and Clothing Issues (Amended 9/14/22[11/14/14])
LLCC 12-02-01	Laundry Services (Amended 9/14/22[7/10/12])
LLCC 12-03-01	Vermin and Insect Control (Amended 9/14/22[5/15/12])
LLCC 12-04-01	Personal Hygiene Items: Issuance and Replacement Schedule (Amended 9/14/22[5/15/12])
LLCC 13-02-01	Access to Healthcare (Amended 9/14/22[8/7/15])
LLCC 13-02-02	Specialized Health Services (Amended 9/14/22[8/7/15])
LLCC 13-02-03	Vision Care, Prostheses and Orthodontic Devices (Amended 9/14/22[8/7/15])
LLCC 13-02-05	Medical Services Co-pay (Amended 9/14/22[8/7/15])
LLCC 13-03-01	Mental Health Services (Amended 9/14/22[5/15/12])
<del>LLCC 13-03-02</del>	<del>Use of Psychotropic Medications (Amended 5/15/12)</del>
LLCC 13-04-01	Inmate Medical Screenings and Health Evaluations (Amended 9/14/22[7/26/13])
LLCC 13-04-02	Health Education and Special Health Programs (Added 9/14/22[7/26/13])
<del>LLCC 13-04-06</del>	<del>Psychological and Psychiatric Records (Added 5/15/12)</del>
LLCC 13-05-02	Self-Administration of Medication (Inmate) (Amended 9/14/22[7/26/13])
LLCC 13-06-01	Health Records (Amended 9/14/22[7/26/13])
LLCC 13-06-03	Notification of Inmate Family of Serious Illness, Surgery, or Inmate Death (Amended 9/14/22[7/26/13])
LLCC 13-07-01	Serious and Infectious Diseases (Amended 9/14/22[7/26/13])
LLCC 13-07-02	Medical Waste Management (Amended 9/14/22[8/7/15])
LLCC 13-08-01	Restraint Approval (Amended 9/14/22[5/15/12])
<del>LLCC 13-09-01</del>	<del>Substance Abuse and Chemical Dependency Program (Amended 5/15/12)</del>
LLCC 14-03-01	Inmate Legal Services (Amended 9/14/22[8/7/15])
<del>LLCC 14-04-01</del>	<del>Americans with Disabilities Act and Inmate Access (Added 9/14/22)</del>
LLCC 15-01-02	Inmate Housing Assignment (Amended 9/14/22[5/15/12])
LLCC 15-01-03	Operational Procedures of the Units (Amended 9/14/22[5/15/12])
LLCC 15-01-04	Rules of the Unit (Amended 9/14/22[11/14/14])
LLCC 15-01-08	Searches and Control of Excess Property (Amended 9/14/22[7/26/13])
LLCC 15-01-09	Laundry Unit Services (Amended 9/14/22[9/15/14])
LLCC 16-01-01	Inmate Correspondence (Amended 9/14/22[5/15/12])
LLCC 16-01-02	Inmate Privileged or Legal Mail (Amended 9/14/22[5/15/12])
LLCC 16-01-03	Inmate Packages (Amended 9/14/22[5/15/12])
LLCC 16-02-01	Inmate Visiting (Amended 9/14/22[7/26/13])
LLCC 16-02-02	Extended and Special Visits (Amended 9/14/22[5/15/12])
LLCC 16-02-03	Restricted Visitation Privileges (Amended 9/14/22[5/15/12])
LLCC 16-03-04	Parole Hearings: Media and Visitors

	(Amended 9/14/22[5/15/12])
LLCC 17-01-01	Inmate Transportation, Reception, and Discharge Process (Amended 9/14/22[5/15/12])
LLCC 17-03-01	Assessment and Orientation (Amended 9/14/22[8/7/15])
LLCC 17-04-01	Personal Property Control (Amended 9/14/22[5/15/12])
LLCC 17-04-02	Missing or Stolen Inmate Personal Property (Amended 9/14/22[5/15/12])
LLCC 17-05-01	Appliances to Outside Dealers for Repair (Amended 9/14/22[7/10/12])
LLCC 18-01-01	Meritorious Housing (Amended 9/14/22[7/26/13])
<del>LLCC 18-02-01</del>	<del>Minimum Security Unit Operations (Amended 7/26/13)</del>
LLCC 18-02-02	Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) (Added 10/14/15)
LLCC 19-01-02	Job Assignments and Dismissals (Amended 9/14/22[11/14/14])
LLCC 20-01-01	Education [Educational Programs] (Amended 9/14/22[7/26/13])
LLCC 21-01-01	Library Services (Amended 9/14/22[5/15/12])
LLCC 22-01-01	Recreation and Inmate Activities (Amended 9/14/22[9/12/14])
LLCC 22-02-01	Inmate Clubs and Organizations (Amended 9/14/22[8/7/15])
<del>LLCC 22-02-02</del>	<del>Inmate Photographs Project (Amended 8/7/15)</del>
LLCC 22-05-02	Arts and Crafts Program (Amended 9/14/22[8/7/15])
LLCC 23-01-01	Religious Program (Amended 9/14/22[11/14/14])
LLCC 23-01-03	Inmate Family Emergency Notification (Amended 9/14/22[11/14/14])
LLCC 24-01-01	Counseling and Social Services (Amended 9/14/22[7/26/13])
LLCC 25-01-01	Final Release (Amended 9/14/22[8/7/15])
LLCC 26-01-01	Citizen Involvement and Volunteer Services Program (Amended 9/14/22[9/15/14])
LLCC 26-02-01	Use of Students (Amended 9/14/22[5/15/12])
LLCC 26-02-02	Student and Volunteer Identification Badges (Amended 9/14/22[5/15/12])
LLCC 26-03-01	Confidentiality of Information, Roles and Services of Consultants, Contract Personnel, Students, and Volunteers (Amended 9/14/22[5/15/12])

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m.

Cookie Crews, Commissioner, Department of Corrections

APPROVED BY AGENCY: March 30, 2022

FILED WITH LRC: September 14, 2022 at 12:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 30, 2022 at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the

proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Luther Luckett Correctional Complex (LLCC).

(b) The necessity of this administrative regulation: This regulation meets statutory requirements in KRS 196.035 and 197.020 and meets American Correctional Association (ACA) policy requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes permit the Secretary of the Cabinet or his delegate and the Commissioner to implement practices or procedures to ensure the safe and efficient operation of the institution.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to LLCC employees and inmates concerning employee duties, inmate responsibilities, and the procedures that govern operations of the institution.

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

(a) How the amendment will change this existing administrative regulation: The amendment brings the institution into compliance with ACA expected practices and updates the procedures for the institution.

(b) The necessity of the amendment to this administrative regulation: The amendment meets the requirements of KRS 196.035 and 197.020 and updates practices for the institution in part to maintain accreditation with the ACA.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes permit the Secretary of the Cabinet or his delegate and the Commissioner to implement or amend practices or procedures to ensure the safe and efficient operation of the institution.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and inmates information concerning the effective and orderly management of the institution.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 201 employees and 980 inmates at the Luther Luckett Correctional Complex and all volunteers and visitors to the institution.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff, inmates, volunteers, and visitors will have to follow the changes made in the policies and procedures. They will have to change their actions to comply with the operational changes made by this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An increase in cost is not anticipated from the changes in operations made in the amendment. An exact cost of compliance is unknown, but it is not anticipated that the amendment to this administrative regulation will increase current costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the institution.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Corrections budgeted funds for the institution for the biennium.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The regulation establishes an appliance repair fee for the vendor in LLCC 17-05-01. The fee is not increased in this amendment.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

#### FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.870 – 61.884, 196.035, 197.020, 439.510

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

(a) How much 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 appliance repair fee does not generate revenue for the institution, but is provided to the vendor for repair and return postage.

(b) How 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 appliance repair fee is not expected to be generate revenue in a similar manner in future years.

(c) How much will it cost to administer this program for the first year? The regulation impacts how the institution operates, but does not increase costs from what will be budgeted to the institution for the biennium.

(d) How much will it cost to administer this program for subsequent years? The regulation impacts how the institution operates, but is not expected to increase costs from what will be budgeted to the institution.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(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 cost savings are anticipated.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No cost savings are anticipated.

(c) How much will it cost the regulated entities for the first year? The regulation impacts how the institution operates, but does not increase costs from what will be budgeted to the institution for the biennium.

(d) How much will it cost the regulated entities for subsequent years? The regulation impacts how the institution operates, but does not increase costs from what will be budgeted to the institution for the biennium.

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)] No major economic impact is anticipated.

**JUSTICE AND PUBLIC SAFETY CABINET  
Department of Corrections  
(Amendment)**

**501 KAR 6:080. Department of Corrections manuals.**

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 197.065, 197.110, 439.470, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any of its divisions. This administrative regulation incorporates by reference the manuals that are referenced in policies and procedures for the Department of Corrections.

Section 1. Incorporation by Reference. (1) "Department of Corrections Manuals," are incorporated by reference. Department of Corrections Manuals includes:

(a) Classification Manual (Amended 9/14/22[Amended 2/12/24]); and

(b) Kentucky Department of Corrections Religion Reference Manual (Amended 9/14/22[Added 3/10/08]).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Corrections website at <https://corrections.ky.gov/About/Pages/lrcfilings.aspx>. 501 KAR 6:080 Department of Corrections Manuals

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: November 22, 2021

FILED WITH LRC: September 14, 2022 at 12:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on November 30, 2022, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, [Justice.RegContact@ky.gov](mailto:Justice.RegContact@ky.gov), telephone number (502) 564-3279, facsimile number (502) 564-6686.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Amy Barker, Assistant General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the Classification Manual and Religion Reference Manual that are referenced in the policies and procedures of the department.

(b) The necessity of this administrative regulation: This administrative regulation updates the manual for religion information for inmates within the Department of Corrections (DOC) in compliance with the requirements of KRS 197.065 and 197.020 and gives guidance to DOC staff for religious issues involving inmates.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 196.035 authorizes the secretary of the cabinet or the secretary's delegate to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet. KRS 197.020 requires administrative regulations concerning the conduct of officials and inmates.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to DOC employees and inmates concerning classification and religious practice of inmates.

(2) If 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 substantially rewrites the Religion Reference Manual for the department. It arranges the religions addressed in the manual in alphabetical order, establishes a similar format for information for each religion, and adds several religions for which questions involving a correctional institution have been asked.

(b) The necessity of the amendment to this administrative regulation: The manual has a more user-friendly format, additional information is added for a number of religions, and additional religions for which questions have been asked are added to the manual to assist staff and inmates.

(c) How the amendment conforms to the content of the authorizing statutes: The statutes allow the Commissioner or the Secretary's authorized representative to implement or amend practices to ensure the safe and efficient operation of the correctional institutions.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and inmates information concerning religious practices of various religions for reference.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Kentucky Department of Corrections, approximately 3,349 employees, approximately 13,221 prisoners, and the private prison company for the Kentucky inmates that it incarcerates.

(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 manual gives guidance to staff and prisoners concerning religious practices of various religions for reference.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost is unknown, but it is not anticipated that the amendment to this administrative regulation will increase current costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An updated Religion Reference Manual will provide information for staff and inmates. The reorganization makes the manual easier to navigate and

understand. The expanded descriptions provide additional information to staff and inmates.

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

(a) Initially: An exact cost is unknown, but it is not anticipated that the amendment to this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost is unknown, but it is not anticipated that the amendment to this administrative regulation will increase current costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Department of Corrections budgeted funds for the biennium.

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

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

(9) TIERING: Is tiering applied? NO. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

#### FISCAL NOTE

(1) What 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 amendments to this regulation impact the reference information available to the Kentucky Department of Corrections and its correctional institutions.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020, and 197.065.

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

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

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

(c) How much will it cost to administer this program for the first year? The amendment to this regulation impacts how the Department of Corrections provides religious information to inmates. The costs are not anticipated to increase with this amendment.

(d) How much will it cost to administer this program for subsequent years? The costs are not anticipated to increase with this amendment.

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

Revenues (+/-):

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 cost savings are anticipated.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No cost savings are anticipated.

(c) How much will it cost the regulated entities for the first year? The regulation impacts how the department provides religious information to inmates, but does not increase costs from

what will be budgeted to the department for the biennium.

(d) How much will it cost the regulated entities for subsequent years? The regulation impacts how the department provides religious information to inmates, but does not increase costs from what will be budgeted to the department for the biennium.

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)] No major economic impact is anticipated.

#### JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amendment)

#### 501 KAR 6:130. Western Kentucky Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.590 and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Western Kentucky Correctional Complex.

Section 1. Incorporation by Reference. (1) "Western Kentucky Correctional Complex Policies and Procedures," September 14, 2022~~[March 10, 2014]~~, are incorporated by reference. Western Kentucky Correctional Complex policies and procedures include:

WKCC 01-02-01	Public Information and Media Communication (Amended 9/14/22[1/14/14])
WKCC 02-01-01	Inmate Funds (Amended 9/14/22[1/14/14])
WKCC 02-01-02	Inmate Canteen (Amended 9/14/22[6/15/12])
WKCC 03-00-06	Confidentiality of Information by Consultants, Contract Personnel, and Volunteers (Amended 9/14/22[11/14/06])
WKCC 06-00-01	Offender Records and Information Access (Amended 9/14/22[8/14/12])
WKCC 06-00-02	Administrative Process for Inmate Court Orders (Amended[Added] 9/14/22[6/15/12])
WKCC 08-02-01	Fire Safety Plan (Amended 9/14/22[8/14/12])
WKCC 09-11-01	Tool Control (Amended 9/14/22[6/15/12])
WKCC 10-02-02	Special Management Unit (SMU) Operating Procedures, Living Conditions and Classification (Amended 9/14/22[1/14/14])
WKCC 11-00-01	Food Service General Requirements[Guidelines] (Amended 9/14/22[6/15/12])
[WKCC 11-02-00]	Food Service Budgeting and Purchasing (Added 6/15/12)
WKCC 11-03-01	Food Service Meals[- Menus, Nutrition] and Special Diets (Amended 9/14/22[8/14/12])
WKCC 12-00-02	Housekeeping, Sanitation, and Waste Removal (Amended 9/14/22[8/14/12])
WKCC 13-01-01	Use of Pharmaceutical Products (Amended

	9/14/22[6/15/12])
WKCC 13-02-01	Health Care Services (Amended 9/14/22[6/15/12])
WKCC 13-02-02	Mental Health Services (Amended 9/14/22[8/14/12])
WKCC 14-02-01	Inmate Clothing and Personal Hygiene Provisions (Amended 9/14/22[6/15/12])
WKCC 14-04-01	Legal Services Program (Amended 9/14/22[6/15/12])
WKCC 15-01-01	Hair and Grooming Standards (Amended 9/14/22[6/15/12])
WKCC 16-01-01	Visiting Policy and Procedures (Amended 9/14/22[3/10/14])
WKCC 16-02-01	Inmate Correspondence (Amended 9/14/22[6/15/12])
WKCC 16-03-01	Inmate Access to Telephones (Amended 9/14/22[10/14/05])
WKCC 16-04-01	Inmate Packages (Amended 9/14/22[1/14/14])
WKCC 17-01-01	Inmate Personal Property (Amended 9/14/22[8/14/12])
WKCC 17-02-01	Inmate Reception and Orientation (Amended 9/14/22[8/14/12])
WKCC 19-04-01	Assignment to and Safety Inspections of Inmate Work Program Areas (Amended 9/14/22[8/14/12])
WKCC 19-04-02	Farm Management and Production [Guidelines] (Amended 9/14/22[Added 6/15/12])
WKCC 20-01-01	Education [Program] (Amended 9/14/22[8/14/12])
WKCC 21-00-01	Library Services (Amended 9/14/22[8/14/12])
WKCC 22-00-01	Inmate Recreation and Leisure Time Activities (Amended 9/14/22[8/14/12])
WKCC 22-00-02	Inmate Organizations (Amended 8/14/12)
WKCC 23-00-01	Religious Services (Amended 9/14/22[8/14/12])
WKCC 24-00-01	Social Services (Amended 9/14/22[8/14/12])
WKCC 25-02-01	Inmate Release Process (Amended 9/14/22[6/15/12])
WKCC 25-03-01	Prerelease Programs (Amended 6/15/12)
WKCC 26-01-01	Volunteer Services Program (Amended 9/14/22[6/15/12])

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Corrections Web site at <https://corrections.ky.gov/About/Pages/lrcfilings.aspx>.

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: March 30, 2022

FILED WITH LRC: September 14, 2022 at 12:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 30, 2022, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-

6686, email [Justice.RegContact@ky.gov](mailto:Justice.RegContact@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker, Assistant General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Western Kentucky Correctional Complex.

(b) The necessity of this administrative regulation: This regulation meets statutory requirements in KRS 196.035 and 197.020 and meets American Correctional Association (ACA) policy requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes permit the Secretary of the Cabinet or his delegate and the Commissioner to implement practices or procedures to ensure the safe and efficient operation of the institution.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to the institution's employees and inmates concerning employee duties, inmate responsibilities, and the procedures that govern operations of the institution.

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

(a) How the amendment will change this existing administrative regulation: The amendment brings the Western Kentucky Correctional Complex into compliance with ACA Expected Practices and updates practices for the institution.

(b) The necessity of the amendment to this administrative regulation: The amendment meets the requirements of KRS 196.035 and 197.020 and updates practices for the institution in part to maintain accreditation with the ACA.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes permit the Secretary of the Cabinet or his delegate and the Commissioner to implement or amend practices or procedures to ensure the safe and efficient operation of the institution.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and inmates information concerning the effective and orderly management of the institution.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 250 employees and 675 inmates at the Western Kentucky Correctional Complex and all volunteers and visitors to the institution.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff, inmates, volunteers, and visitors will have to follow the changes made in the policies and procedures. They will have to change their actions to comply with the operational changes made by this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An increase in cost is not anticipated from the changes in operations made in the amendment. An exact cost of compliance is unknown, but it is not anticipated that the amendment to this administrative regulation will increase current costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the institution.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

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

Department of Corrections budgeted funds for the institution for the biennium.

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

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

#### FISCAL NOTE

(1) What 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 amendments to this regulation impact the operation of Western Kentucky Correctional Complex.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 to this regulation will not create any revenue.

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

(c) How much will it cost to administer this program for the first year? The amendment to this regulation impacts how the institution operates but does not increase costs from what was previously budgeted.

(d) How much will it cost to administer this program for subsequent years? The amendment to this regulation impacts how the institution operates but does not increase costs from what was previously budgeted.

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? No cost savings are anticipated.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No cost savings are anticipated.

(c) How much will it cost the regulated entities for the first year? The regulation impacts how the institution operates, but does not increase costs from what will be budgeted to the institution for the biennium.

(d) How much will it cost the regulated entities for subsequent years? The regulation impacts how the institution operates, but does not increase costs from what will be budgeted to the institution for the biennium.

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)] No major economic impact is anticipated.

#### PUBLIC PROTECTION CABINET Department of Insurance Property and Casualty Division (Amendment)

#### 806 KAR 39:030. Kentucky No-Fault Rejection Form.

RELATES TO: KRS 304.39-060

STATUTORY AUTHORITY: KRS 304.2-110, 304.39-300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the commissioner of the Department of Insurance may promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code. KRS 304.39-060 requires the Department of Insurance to prescribe a form whereby any person may reject limitations on his or her tort rights and liabilities. This administrative regulation establishes the Kentucky No-Fault Rejection Form and provides for its electronic submission.

Section 1. Rejection. Any person may refuse to consent to the limitation of his or her tort rights and liabilities by filing with the Department of Insurance a Kentucky No-Fault Rejection Form.

Section 2. Submitting the Kentucky No-Fault Rejection Form.

[(1)] Members of the same household may indicate rejections on the same form, but each household member shall execute the form on his or her own behalf unless under legal disability, or a minor under eighteen (18) years of age. [The policyholder shall:]

Section 3. (1) The policyholder shall:

(a) Mail the original and one (1) copy of the NF-1(a)(b)(c) P and C, "Kentucky No-Fault Rejection Form" [form] to the Department of Insurance; or

(b) Submit the NF-1(a)(b)(c) P and C, "Kentucky No-Fault Rejection Form" [form] electronically [using the online version of the "Kentucky No-Fault Rejection Form,"] through [available on] the department's Web site at <https://insurance.ky.gov/ppc/CHAPTER.aspx> [<http://insurance.ky.gov>].

(2) Upon receipt of the properly completed form, the department shall provide the policyholder a file-stamped electronic or hard copy for his or her records.

(3) A rejection is effective upon the date of filing with the department as indicated by the department file stamp and remains effective unless superseded by the filing of a subsequent rejection form.

(4) A rejection may be revoked by submitting a Kentucky No-Fault Rejection Form and selecting the revocation option.

Section 4. [Section 3.] Legal Disability or a minor. Where a guardian or conservator has been appointed for a person under a legal disability, the guardian or conservator shall execute the rejection form on behalf of the person. A rejection for a minor under eighteen (18) years of age shall be executed by a parent, if there is no guardian or conservator. A rejection executed by a parent, guardian, or conservator is valid only so long as the individual is under legal disability, which includes a minor under eighteen (18) years of age.

Section 5. [Section 4.] Notice to insurer. Each policyholder or insured submitting the Kentucky No-Fault Rejection Form shall send to his or her insurance company a file stamped copy of any rejection form filed with the Department of Insurance.

Section 6.~~[Section 5.] Materials Incorporated~~~~[Incorporation]~~ by Reference.

(1) NF-1(a)(b)(c) P and C, "Kentucky No-Fault Rejection Form", ~~9/2022~~~~[(12/17)]~~, is incorporated by reference.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, ~~500 Mero Street~~~~[215 West Main Street]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Department of Insurance Web site: [https://insurance.ky.gov/PPC/New\\_Default.aspx](https://insurance.ky.gov/PPC/New_Default.aspx)~~[http://insurance.ky.gov]~~.

SHARON P. CLARK, Commissioner

RAY A. PERRY, Secretary

APPROVED BY AGENCY: September 8, 2022

FILED WITH LRC: September 14, 2022 at 12:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on November 22, 2022 at 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 11:59 PM on November 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Abigail Gall, Executive Advisor, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1423, email [abigail.gall@ky.gov](mailto:abigail.gall@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Abigail Gall

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the "Kentucky No-Fault Rejection Form" and the method for an individual to reject limitations on tort rights and liabilities.

(b) The necessity of this administrative regulation: KRS 304.39-060 requires the Department of Insurance to prescribe a form whereby any person may reject limitations on his tort rights and liabilities. This administrative regulation is needed to prescribe the required form and the manner in which it is to be used.

(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 provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.39-060 requires the Department of Insurance to prescribe a form whereby any person may reject limitation on his tort rights and liabilities. This administrative regulation prescribes the required form and establishes the process for an individual to reject his or her limitations on tort rights and liabilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will establish the specific procedures that must be followed to reject limitations on tort rights and liabilities.

(2) If 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 administrative regulation amend the incorporated form. The amendments to the form better define the options for individuals who are rejecting limitations on their tort rights, specifically those who reject those limitations for vehicles covered by a commercial insurance policy.

(b) The necessity of the amendment to this administrative

regulation: The Department has seen several inquiries seeking clarity with respect to the options listed on the "KY No-Fault Rejection Form" and this amendment will provide further clarity.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.39-060 requires the Department of Insurance to prescribe a form whereby any person may reject limitations on his tort rights and liabilities and these amendments clarify the options available to individuals seeking to reject limitations on their tort rights and liabilities.

(d) How the amendment will assist in the effective administration of the statutes: KRS 304.39-060 requires the Department of Insurance to prescribe a form whereby any person may reject limitation on his tort rights and liabilities. These amendments clarify the options available to each individual (owner/operator) based upon their rejection preference.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department has received 356,319 No-Fault forms since 1999. To date in 2022, the Department has received 247 new No-Fault forms.

(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: Insurers and agents will be required to assist individuals in completing the Kentucky No-Fault Rejection Form on-line. Prior to finalizing the form for submission to the Department, the insurance agent or the insurer will be required to provide a paper copy of the form to the person rejecting no-fault benefits, and to obtain the individual's original signature.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not impose additional costs for individuals, insurers, or agents.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance will allow individuals to properly address the specific tort right limitations they wish to reject.

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

(a) Initially: No associated cost

(b) On a continuing basis: No associated cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Insurance'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 not a need to increase fees.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No, this regulation does not establish any fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all individuals rejecting the limitations on their tort rights and liabilities.

#### 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 Insurance as the implementer.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110, 304.39-300.

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

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

revenue will be generated.

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

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

(d) How much will it cost to administer this program for subsequent years? There is no administrative cost associated with 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: There is no expectation of any fiscal impact.

(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 cost savings are associated with this regulation or amendments.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No cost savings are associated with this regulation or amendments.

(c) How much will it cost the regulated entities for the first year? There is no cost expected.

(d) How much will it cost the regulated entities for subsequent years? There is no cost expected.

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: There is no cost associated with this administrative regulation and therefore no fiscal impact.

(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 will not have a major economic impact.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Public Health**  
**Division of Administration and Financial Management**  
**(Amendment)**

**902 KAR 8:160. Local health department operations requirements.**

RELATES TO: KRS 211.1751(1), 212.230, 212.240, 212.245, 212.890, 258.005, 7 C.F.R. 246.8

STATUTORY AUTHORITY: KRS 194A.050(1), 211.170, 211.180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the citizens of the commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet; or to comply with federal law. KRS 211.170(1) and (3) require the cabinet to establish policies and standards of operation for the local health departments of Kentucky. This administrative regulation establishes minimum administrative and operational requirements for Kentucky's local health departments.

Section 1. Definitions. (1) "Agency" is defined by KRS 211.1751(1).

(2) "Animal control officer" is defined by KRS 258.005(7).

(3) "Board" means the statutorily mandated governing body for local health departments in Kentucky.

(4) "Public health department director" means the administrative officer of the agency.

Section 2. Policies and Procedures. Internal policies and procedures for operations established by an agency shall comply with procedures and policies developed by the cabinet, in accordance with KRS 211.170(1), (2), (3), (4), and (6).

Section 3. Conflict of Interests. (1) An agency employee shall avoid situations that are or appear to be a conflict of interest.

(2) An agency employee shall not:

(a) Sell, recommend, or promote a specific brand of product or equipment ~~that~~<sup>which</sup> is subject to inspection or evaluation by an agency or its employees;

(b) Recommend or express to the public a preference for health-related professional services or products of an individual or firm;

(c) Be engaged in a business or have financial interests ~~that~~<sup>which</sup> affect the employee's professional relationship with the agency or cabinet or impair the effectiveness of the employee;

(d) Enter into a contract with or hold an additional full-time or part-time position in another agency unless approved by the cabinet in writing;

(e) Be an owner or part owner of a business that contracts with or is regulated by the agency without prior review by the cabinet; or

(f) Accept appointment or be employed as an animal control officer.

(3) An agency employee shall not conduct the following services for the employee, the employee's spouse, parent, child, brother or sister or the spouse of either of them, grandparent, grandchild, mother or father-in-law, daughter or son-in-law:

(a) Determine eligibility for an agency service;

(b) Issue women, infants, and children food instruments or prescribe food packages; or

(c) Conduct an inspection or monitor compliance with the agency's medical or environmental standards and administrative regulations.

(4) An employee or former employee shall not receive severance pay in cash, benefits, goods, or services.

Section 4. Employee Tuition Assistance. (1) A public health department director may approve a tuition assistance agreement to specify the terms and conditions for a regular full-time or part-time 100 hour employee to attend a course of study provided by a college or university, correspondence school, vocational school, or other training institution, if the coursework is related to:

(a) The work of the agency; and

(b) The employee's current position; or

(c) An agency position to which the employee can reasonably aspire.

(2) The public health department director may approve tuition assistance from the agency budget for a nonrelated course if:

(a) The course is a requirement for a degree or certification program; and

(b) The degree is determined to be necessary to the function and purpose of the agency.

(3) The board may approve a tuition assistance request to be used by a public health department director for the director's course of study.

(4) Restricted funds used for payment of tuition assistance shall receive prior written approval from the funding authority.

(5) An employee approved to receive tuition assistance shall repay to the agency the tuition paid on the employee's behalf if the employee:

(a) Fails to provide the agency, or board, evidence of satisfactory completion of the training within thirty (30) working days after scheduled completion; or

(b) Receives a grade of:

1. Less than "C" in an undergraduate course;

2. Less than "B" in a graduate course;

3. "F" in a pass/fail course;

4. "U" in a satisfactory/unsatisfactory course;



5. "I" for incomplete; or
6. Fails to complete the training, regardless of cause, without prior approval of the public health department director or board.
- (6) The employee shall maintain paid full-time or part-time 100 hour work status for the agency while taking courses.
- (7) An employee shall continue employment with the agency for a period of at least one (1) month ~~[employment]~~for each semester hour or equivalent of tuition paid by the agency, after completion of all courses~~[course completion]~~, unless directed by the agency to undertake the course work.
- (8) The employee shall repay the agency for educational assistance funds expended on the employee's behalf if the employee resigns, retires, or is dismissed for cause prior to completion of the continued employment provisions of subsection (7) of this section.
- (9) The repayment shall be:
  - (a) Prorated according to the portion of the continued employment provisions of subsection (7) of this section the employee has fulfilled; and
  - (b) Repaid within six (6) months following resignation, retirement, or dismissal.
- (10) The employee may use accumulated annual leave or compensatory time as necessary to attend classes if requested by the employee.
- (11) The maximum allowable course hours an employee may take in a semester shall be determined by the public health department director as provided in their internal control manual.
- (12) If approved, tuition assistance shall be granted for:
  - (a) Tuition and routine registration fees;
  - (b) Laboratory and examination fees; and
  - (c) Required textbooks.
- (13) Tuition assistance shall not be granted for:
  - (a) Late registration;
  - (b) Graduation fees;
  - (c) Parking or transportation;
  - (d) Records or transcripts;
  - (e) Supplies;
  - (f) Assessments; or
  - (g) Courses taken prior to approval by the agency.
- (14) Tuition and fees shall be paid directly to the college or training institution or reimbursed to the employee.
- (15) An agency shall maintain records, subject to audit, to ensure the proper administration of the employee tuition assistance program.

Section 5. Educational Leave Program. (1) The public health department director may approve educational leave for a regular full-time or part-time 100 hour employee.

(2) Educational leave may be approved on a full-time or part-time basis with or without pay as determined by the public health department director.

(3) Educational leave shall be for the purpose of coursework or training related to the current or future duties and responsibilities of the employee.

(4) Payment for educational leave shall come from the agency budget.

(5) Restricted funds used for payment of educational leave shall receive prior written approval from the funding authority.

(6) Educational leave payment shall not be granted for:

- (a) Late registration fees;
- (b) Graduation fees;
- (c) Parking or transportation;
- (d) Records or transcripts;
- (e) Supplies;
- (f) Assessments; or
- (g) Courses taken prior to approval by the agency.

(7) To participate in educational leave with pay, the employee shall:

- (a) Be a regular full-time or part-time 100 hour employee;
  - (b) Enroll in an area of study with a clear and direct relationship to the work of the agency;
  - (c) Be formally accepted by the educational institution; and
  - (d) Be approved for educational leave by the agency.
- (8) An agency approving an employee for educational leave

with pay shall:

(a) Place the employee on full-time or part-time educational leave at the employee's regular rate of pay; and

(b) Restore the employee to the position the employee formerly held, to a position of like status and pay, or promote the employee to a higher position upon the employee's successful completion of educational leave; or

(c) Cancel the employee's educational leave and restore the employee to the same or like position if the academic standing of the employee falls below the requirement of Section 4(5) of this administrative regulation.

(9) An employee on full-time leave with pay shall be a full-time student as defined by the institution where~~[in which]~~ the employee is enrolled.

(10) After satisfactorily completing the educational leave the employee shall:

(a) Continue employment with the agency:

1. At least one (1) day for each full day of leave used if tuition and other fees are not paid by the agency; or

2. At least one and one-half (1 1/2) days for each full day of leave used if tuition and other fees are paid by the agency; or

(b) If the employee terminates employment with the agency, repay the agency at the rate of 100 percent of the employee's daily pay or an average of the employee's daily pay during leave, multiplied by the number of obligated days remaining; and

(c) Forfeit all leave rights if the employee accepts public or institutional financial assistance other than that provided by the agency, unless the agency has granted prior approval.

(11) An agency directing an employee to be placed on full-time or part-time educational leave shall:

(a) Pay the following:

1. The employee's regular rate of pay;

2. Tuition and routine registration fees;

3. Required textbooks~~[and course supplies]~~;

4. Laboratory and examination fees;

5. Dormitory or housing costs; and

6. Transportation costs to and from the school once per semester;

(b) Restore the employee to the position the employee formerly held, to a position of like status and pay, or promote the employee to a higher position, if qualified, following completion of educational leave; and

(c) Cancel the employee's educational leave and restore the employee to the same or like position if the academic standing of the employee falls below the requirement of Section 4(5) of this administrative regulation.

(12) An employee approved for educational leave without pay shall not incur any service obligation to the agency.

(13) An agency shall maintain an educational leave file on each employee requesting or receiving educational leave.

Section 6. Employment of Relatives. (1) Except as provided in subsections (3) and (4) of this section, an agency shall not employ an individual that is immediately related to the public health department director or to an immediate supervisor.

(2) An individual immediately related to the public health department director or immediate supervisor shall include:

(a) Spouse;

(b) Parent;

(c) Child;

(d) Brother or sister or the spouse of either of them;

(e) Grandparent;

(f) Grandchild;

(g) Mother~~[-]~~ or father~~[-]~~in-law; or

(h) Daughter~~[-]~~ or son-in-law.

(3) If a current employee is in a supervisory relationship with an immediate relative, the employee shall be transferred to another site within the agency with the same job duties, or assigned a different supervisor.

(4) The cabinet may approve the employment of an immediate relative in a case determined to be in the public interest and approved by the board.

Section 7. Agency Facility Ownership. (1) An agency shall not

pay rent to the fiscal court if the facility is owned by the fiscal court and was constructed with state funds, agency funds, or local public health tax appropriations.

(2) The agency shall be permitted to remain in the facility owned by the fiscal court rent free for a minimum of twenty (20) years or for the useful life of the facility, whichever is longer.

Section 8. Capital Construction Requirements. (1) An agency requesting state capital construction funds from the cabinet for new construction, building expansion, or renovation shall:

(a) Submit a letter of request for the project to the cabinet, and if requested, submit one (1) copy of the plans and specifications for the project to the cabinet for review and approval;

(b) Submit one (1) copy of the plans and specifications, if appropriate, to the Department of Housing, Buildings, and Construction to assure compliance with building and safety codes;

(c) Provide written assurance to the cabinet that the facility will be constructed in accordance with approved plans and specifications;

(d) Provide written assurance to the cabinet that a cost overrun or financial commitment above the state grant will be paid by the agency;

(e) Submit architectural and contractor agreements or contracts to the cabinet for review prior to implementation;

(f) Provide written assurance to the cabinet that the agency will be allowed to use the facility for a minimum of twenty (20) years rent free or for the useful life of the facility, whichever is longer;

(g) Provide written documentation to the cabinet that the board has approved the awarding of the architectural and contractor agreements;

(h) Provide quarterly progress reports to the cabinet on the status of the project;

(i) Submit a closing report upon completion or close-out of the project; and

(j) Maintain a comprehensive construction file for the useful life of the building which includes:

1. Documents and correspondence relative to the project;
2. Written contracts or agreements; and
3. Progress reports, and financial transactions.

(2) An agency's facilities, whether owned or leased by the agency, shall comply with applicable state and local building, fire and safety codes, and ordinances.

(3) Prior to construction or modification of an x-ray room, the plans and specifications for the construction or modification shall be evaluated by a qualified expert. The Radiation Health Branch of the department shall be contacted regarding compliance requirements.

Section 9. Agency Insurance Requirements. (1) An agency shall maintain current replacement value insurance on:

- (a) A building owned by the agency or board; and
- (b) On the contents of both owned and leased facilities.

(2) An agency shall maintain:

- (a) Public officials' liability insurance for board members;
- (b) General liability insurance for agency staff; and
- (c) Fiduciary bonding on staff and board members who handle public funds.

(3) Contracted providers shall attest to current liability coverage under the terms of their contract with the agency.

(4) Contractors of capital construction projects shall:

- (a) Post bid and performance bonds; and
- (b) Carry appropriate liability insurance at levels approved by the board, to cover their contracted responsibilities.

Section 10. Identification of Local Needs. (1) A local needs assessment that describes the prevailing health status and health needs of the population within the local health department's jurisdiction shall be conducted at least once every five (5) years.

(2) The local needs assessment shall be submitted to the Department for Public Health.

(3) The local needs assessment shall include:

- (a) A statement of the health status of the community;
- (b) A description of the process used to determine the health status of the community, including stakeholder involvement

throughout the local needs assessment;

(c) A summary of the data used to determine the health status of the community, including:

1. Quantitative data;
2. Qualitative data;
3. Community demographic data; and
4. Identification of health inequities; and

(d) An annual evaluation of the progress of evidence-based and promising practice strategies implemented to address the health status of the community.

(4) A community health assessment may be submitted as a local needs assessment provided it meets the requirements of this section.

Section 11. Days and Hours of Operation. (1) An agency shall post the hours of operation near the main entrance to the agency. The posting shall be plainly visible from the outside.

(2) Except in an emergency situation, an agency shall publicize in advance if the agency is to be closed during regular working hours. The notice shall:

(a) Be prominently displayed at the main entrance to the agency;

(b) Indicate where and how staff may be reached; and

(c) Indicate when offices are expected to reopen.

Section 12. Grievance Policies. (1) An agency shall establish an internal grievance procedure to assure the timely and equitable resolution of a complaint alleging discrimination, unfair, or inappropriate treatment from[~~of~~] a member of the public.

(2) In accordance with 7 C.F.R. 246.8, complaints alleging civil rights discrimination for United States Department of Agriculture (USDA) funded programs, such as the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), WIC Farmers Market Nutrition Program, and WIC Breastfeeding Peer Program, shall be referred to or filed with the Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; by fax: (833) 256-1665 or (202) 690-7442; or by email: program.intake@usda.gov. Complaints filed in accordance with this subsection shall be filed within 180 days of the alleged incident. Only the Secretary of the USDA or designee can waive this timeline for cause.

(3) For all other complaints from a member of the public, an agency grievance procedure shall:

(a) Protect the rights of the complainant;

(b) Meet due process requirements;

(c) Assure compliance with applicable federal laws and administrative regulations governing equal opportunity;

(d) Designate an employee to coordinate the grievance process; and

(e) Provide for methods of accepting written, verbal, or anonymous complaints.

(4) [(3)] A complaint shall be filed within sixty (60) days of the alleged incident.

(5) [(4)] An agency shall conduct an investigation of the complaint to afford interested or affected parties an opportunity to submit evidence or testimony relevant to the complaint.

(6) [(5)] A written description of the investigation and a description of the resolution shall be issued and a copy forwarded to the complainant and the agency director no later than forty-five (45) calendar days after receipt of the complaint.

(7) [(6)] An agency shall maintain files and records relating to complaints filed.

(8) [(7)] The complainant dissatisfied with the resolution may request reconsideration, within thirty (30) calendar days, by the public health department director or the board.

(9) [(8)] The complaint shall continue through the agency's grievance process even if the complainant is pursuing other state or federal remedies, unless otherwise advised by legal counsel.

(10) Complaints or grievances regarding employment shall be filed according to the agency's personnel policies.

STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 17, 2022

FILED WITH LRC: August 29, 2022 at 8:00 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall, if requested, be held on November 28, 2022, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by November 17, 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 November 30, 2022. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles or Julie Brooks

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes minimum administrative and operational requirements for Kentucky's local health departments.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure the local health departments operate in a consistent manner across the state.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050 authorizes the secretary to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 211.170 authorizes the cabinet to establish policies governing the activities and practices of local health departments, supervise their financial, personnel, program, administrative and other functions, and establish standards of operation in accordance with KRS 212.120.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure local health departments have consistent operational procedures across the state and operate in compliance with the applicable state and federal laws and 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 amendment to this administrative regulation clarifies the complaint process that the local health department is to provide to the recipient of United States Department of Agriculture (USDA) funded programs, such as the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), WIC Farmers Market Nutrition Program, and WIC Breastfeeding Peer Program, when they believe their civil rights have been violated and clarifies that grievances related to employment are to be filed in accordance with the agency's personnel procedures.

(b) The necessity of the amendment to this administrative regulation: A recent audit of the WIC program identified the complaint process in this administrative regulation to be out of compliance with the requirements of the USDA Civil Rights Division. The amendment to this administrative regulation is necessary to bring the complaint process for recipients of USDA

funded programs into compliance with the applicable code of federal regulation.

(c) How the amendment conforms to the content of the authorizing statutes: 7 C.F.R. 246.8(b) requires that all complaints received by state or local agencies which allege discrimination based on race, color, national origin, sex, or age shall be referred to the Secretary of Agriculture or Director, Office of Equal Opportunity. Additionally, complaints alleging retaliation or reprisal for engaging in a protected civil rights activity are referred to the USDA for processing. The amendment to this administrative regulation updates the grievance policies to conform to the code of federal regulation.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will ensure local health departments have operational procedures in place to refer complainants to the correct agency for investigation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment to this administrative regulation will impact local health departments, the Nutrition Services Branch in the Department for Public Health, and recipients of USDA funded WIC programs.

(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 health departments will need to update grievance policies to ensure the correct complaint information is provided to recipients of USDA funded WIC programs who believe their civil rights have been violated. Local health department staff and state WIC staff will need to be aware of the referral process when a complaint alleging a civil rights violation is received from a recipient of a USDA funded WIC program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Local health departments may incur minimal cost associated with updating any resource materials provided to USDA funded WIC program recipients. There will be no costs to recipients of WIC services.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Local health departments and the state WIC program will be in full compliance with the requirements of 7 C.F.R. 246.8. Recipients of WIC benefits will be assured due process when filing a complaint regarding a violation of their civil rights.

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

(a) Initially: This is an ongoing program, there are no initial cost to implement the amendment to this administrative regulation.

(b) On a continuing basis: There are no anticipated costs to the cabinet to implement this amended administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The WIC program is funded by a grant from the USDA. The Department for Public Health is funded through a mix of state and federal dollars. Local health departments are funded through a mix of state dollars and local funding source dollars.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this administrative regulation are equally 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? This administrative regulation impacts local health departments, the Nutrition Services Branch in the Division of Maternal and Child Health that operates the WIC program, and the Division of Administration and Financial Management that oversees the operations of local health departments.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 211.170, and 211.180.

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

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

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

(c) How much will it cost to administer this program for the first year? This is an ongoing program, there are no initial cost.

(d) How much will it cost to administer this program for subsequent years? This is an ongoing program, there will be no additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(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 does not generate cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation does not generate cost savings.

(c) How much will it cost the regulated entities for the first year? This administrative regulation will have minimal costs the regulated entities in the first year. Some local health departments may have a costs associated with printing updated materials to reflect the change in the complaint process for WIC recipients.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation will not result in increased costs for the regulated entities 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)] This administrative regulation does not have a major economic impact.

## FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 7 C.F.R. 246.8

(2) State compliance standards. KRS 194A.050 authorizes the secretary to promulgate, administer, and enforce those administrative regulations necessary to implement programs

mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs.

(3) Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 246.8(a) requires the state agency to comply with the requirements of title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Department of Agriculture regulations on nondiscrimination (7 C.F.R. parts 15, 15a, and 15b), and Food and Nutrition Service instructions to ensure that no person shall, on the grounds of race, color, national origin, age, sex, or handicap, be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under the program. 7 C.F.R. 246.8(b) requires that all complaints received by state or local agencies which allege discrimination based on race, color, national origin, or age shall be referred to the Secretary of Agriculture or Director, Office of Equal Opportunity.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, this administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements.

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

## CABINET FOR HEALTH AND FAMILY SERVICES

### Department for Medicaid Services

### Division of Policy and Operations

### (Amendment)

## 907 KAR 1:680. Vaccines for Children Program.

RELATES TO: KRS 205.520, 42 U.S.C. 1396s

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396a, b, d, s, 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 any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the provisions relating to vaccines provided through the Vaccines for Children Program.

Section 1. Definitions. (1) "Immunization" means an inoculation against a vaccine preventable disease.

(2) "Program registered provider" means a health care provider that is:

(a) Licensed or otherwise authorized for administration of pediatric vaccines; and

(b) Enrolled in the Vaccines for Children Program.

(3) "Recipient" means a person age eighteen (18) or under who has been determined eligible to receive benefits under the state's Title XIX or Title XXI program in accordance with Title 907 KAR [Chapters 1 through 4].

(4) "Vaccines for Children Program" means the program for distribution of pediatric vaccines administered by the Department for Public Health and described in 42 U.S.C. 1396s.

Section 2. Obtaining Vaccines. (1) A program registered provider may[shall] obtain a vaccine for the administration of a childhood immunization to an eligible recipient from the Vaccines for Children Program.

(2) ~~[The Medicaid Program shall not make payment to a provider for the cost of a vaccine available through the Vaccines for Children Program.]~~

~~—(3) A fee for administering a vaccine obtained through the Vaccines for Children Program may be paid by the department~~

through the appropriate provider program.  
907 KAR 1:680

LISA D. LEE, Commissioner  
ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 9, 2022

FILED WITH LRC: September 12, 2022 at 12:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 28, 2022, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by November 17, 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 November 30, 2022. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jonathan Scott, Executive Advisor

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the provisions relating to vaccines provided through the Vaccines for Children Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS's policy and reimbursement provisions relating to the Vaccines for Children Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing DMS's policy and reimbursement provisions regarding the Vaccines for Children Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing DMS's policy and reimbursement provisions relating to the Vaccines for Children Program.

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

(a) How the amendment will change this existing administrative regulation: The amendment modifies this regulation to comport with modern practice realities relating to the Vaccines for Children Program (VCF). The regulation is amended to make participation permissive and to allow for reimbursement to certain providers regardless of the provider's participation in the VCF program.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure greater participation and availability of vaccines throughout the Medicaid program.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by clarifying and expanding how providers can administer vaccinations to Medicaid recipients.

(d) How the amendment will assist in the effective

administration of the statutes: The amendment assists in effectively administering the statutes by providing needed clarification about how Medicaid providers can administer vaccines.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Approximately 59,000 Medicaid providers and 1.6 million Medicaid recipients, including more than 600,000 children may benefit from the expanded vaccination activities that could occur under this regulatory clarification.

(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: Some providers who are not enrolled in the VFC program may begin to increase vaccine administration to Medicaid recipients.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The department does not anticipate additional costs to providers as a result of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Providers should be able to expand vaccination efforts to more of the Medicaid population.

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

(a) Initially: The department does not anticipate additional costs as a result of this administrative regulation.

(b) On a continuing basis: The department 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: Sources of funding to be used 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: The department does not anticipate any increase in fees or funding as a result of the change 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 directly or indirectly increase 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 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? This administrative regulation is not expected to generate costs for DMS in the first year.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation is not expected to generate costs for DMS 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 may result in higher reimbursement for regulated entities.

(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 may result in higher reimbursement for regulated entities.

(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.

#### FEDERAL MANDATE ANALYSIS COMPARISON

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

(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. Under the VFC program, vaccines are administered by program-registered providers.

(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 Medicaid Services Division of Policy and Operations (Amendment)

#### 907 KAR 3:010. Reimbursement for physicians' services.

RELATES TO: KRS 205.560, 205.565, 210.370-210.485, 311.840, 42 C.F.R. 400.203, Part 414, 415.110, 438.2, 440.50, 447.10, 447.200-447.205, 447.325, 42 U.S.C. 1395m, 1395w-4, 1395x(t)(1), 1396a, 1396b, 1396c, 1396d, 1396s

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the method of reimbursement for physicians' services by the Medicaid program.

Section 1. Definitions. (1) "Add-on code" or "add-on service" means a service designated by a specific CPT code that may be used in conjunction with another CPT code to denote that an adjunctive service has been performed.

(2) "Anesthesia under medical direction" means a service that is:

(a) Directed by an anesthesiologist;

(b) Delivered by an appropriate and qualified anesthesia provider, including a certified registered nurse anesthetist; and

(c) Provided concurrently to no more than four (4) patients by the anesthesiologist.

(3) "Assistant surgeon" means a physician who attends and acts as an auxiliary to a physician performing a surgical procedure.

(4) "Community mental health center" means a facility that meets the community mental health center requirements established in 902 KAR 20:091.

(5) "CPT code" means a code used for reporting procedures and services performed by physicians and published annually by the American Medical Association in Current Procedural Terminology.

(6) "Department" means the Department for Medicaid Services or its designee.

(7) "Direct physician contact" means that the billing physician is physically present with and evaluates, examines, treats, or diagnoses the recipient.

(8) "Drug" means the definition of "drugs" pursuant to 42 U.S.C. 1395x(t)(1).

(9) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(10) "Global period" means the period of time in which related preoperative, intraoperative, and postoperative services and follow-up care for a surgical procedure are customarily provided.

(11) "Healthcare common procedure coding system" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services (CMS) that represents procedures or items.

(12) "Incidental" means that a medical procedure:

(a) Is performed at the same time as a primary procedure; and

(b)1. Requires little additional resources; or

2. Is clinically integral to the performance of the primary procedure.

(13) "Integral" means that a medical procedure represents a component of a more complex procedure performed at the same time.

(14) "Locum tenens physician" means a substitute physician:

(a) Who temporarily assumes responsibility for the professional practice of a physician participating in the Kentucky Medicaid program; and

(b) Whose services are paid under the participating physician's provider number.

(15) "Major surgery" means a surgical procedure assigned a ninety (90) day global period.

(16) "Managed care organization" means an entity for which the department has contracted to serve as a managed care organization as defined by 42 C.F.R. 438.2.

(17) "Medicaid Physician Fee Schedule" means a list, located at <https://chfs.ky.gov/agencies/dms/Pages/feesrates.aspx>, that:

(a) Contains the current reimbursement rates for physician services established by the department in accordance with this administrative regulation; and

(b) Is updated at least quarterly to coincide with the quarterly updates made by the Centers for Medicare and Medicaid Services as required by 42 U.S.C. 1395m and 1395w-4 and 42 C.F.R. Part 414.

(18) "Minor surgery" means a surgical procedure assigned a ten (10) day global period.

(19) "Modifier" means a reporting indicator used in conjunction with a CPT code to denote that a medical service or procedure that has been performed has been altered by a specific circumstance while remaining unchanged in its definition or CPT code.

(20) "Mutually exclusive" means that two (2) procedures:

(a) Are not reasonably performed in conjunction with each other during the same patient encounter on the same date of service;

(b) Represent two (2) methods of performing the same procedure;

(c) Represent medically impossible or improbable use of CPT codes; or

(d) Are described in Current Procedural Terminology as inappropriate coding of procedure combinations.

(21) "Pediatric teaching hospital" is defined by KRS 205.565(1).

(22) "Physician administered drug" or "PAD" means any rebateable covered outpatient drug that is:

(a) Provided or administered to a Medicaid recipient;

(b) Billed by a provider other than a pharmacy provider through the medical benefit, including a provider that is a physician office or another outpatient clinical setting; and

(c) An injectable or non-injectable drug furnished incident to provider services that are billed separately to Medicaid.

(23) "Physician assistant" is defined by KRS 311.840(3).

(24) "Professional component" means the physician service component of a service or procedure that has both a physician service component and a technical component.

(25) "Provider group" means a group of at least two (2) individually licensed physicians who:

(a) Are enrolled with the Medicaid program individually and as a group; and

(b) Share the same Medicaid provider number.

(26) "Relative value unit" or "RVU" means the Medicare-established value assigned to a CPT code that takes into consideration the physician's work, practice expense, and liability insurance.

(27) "Resource-based relative value scale" or "RBRVS" means the product of the relative value unit (RVU) and a resource-based dollar conversion factor.

(28) "State university teaching hospital" means:

(a) A hospital that is owned or operated by a Kentucky state-supported university with a medical school; or

(b) A hospital:

1. In which three (3) or more departments or major divisions of the University of Kentucky or University of Louisville medical school are physically located and that are used as the primary (greater than fifty (50) percent) medical teaching facility for the medical students at the University of Kentucky or the University of Louisville; and

2. That does not possess only a residency program or rotation agreement.

(29) "Technical component" means the part of a medical procedure performed by a technician, inclusive of all equipment, supplies, and drugs used to perform the procedure.

(30) "Usual and customary charge" means the uniform amount that a physician charges the general public in the majority of cases for a specific medical procedure or service.

covered service shall be made to:

(a) The individual participating physician who provided the covered service; or

(b) The physician:

1. In a provider group enrolled in the Kentucky Medicaid program; and

2. Who provided the covered service.

(2) Except as provided in subsection (3) of this section and Sections 3 through 11 of this administrative regulation, reimbursement for a covered service shall be the lesser of:

(a) The physician's usual and customary charge; or

(b) The amount specified in the Medicaid Physician Fee Schedule established in accordance with this administrative regulation.

(3) If there is not an established fee for a listed service in the Medicaid Physician Fee Schedule, the reimbursement shall be forty-five (45) percent of the usual and customary billed charge.

Section 3. Rates Established Using a Relative Value Unit and a Dollar Conversion Factor.

(1) Except for a service specified in Sections 4 through 10 of this administrative regulation:

(a) The rate for a non-anesthesia related covered service shall be established by multiplying RVU by a dollar conversion factor to obtain the RBRVS maximum amount specified in the Medicaid Physician Fee Schedule; and

(b) The rate for a covered anesthesia service shall be established by multiplying the dollar conversion factor (designated as X) by the sum of each specific procedure code RVU (designated as Y) plus the number of units spent on that specific procedure (designated as Z). A unit shall equal a fifteen (15) minute increment of time.

(2) The dollar conversion factor shall be:

(a) Fifteen (15) dollars and twenty (20) cents for a nondelivery related anesthesia service; or

(b) Twenty-nine (29) dollars and sixty-seven (67) cents for all non-anesthesia related services.

Section 4. Medicare Part B Covered Services. Reimbursement for a service covered under Medicare Part B shall be made in accordance with 907 KAR 1:006, Section 3.

Section 5. Services with a Modifier. Reimbursement for a service denoted by a modifier used in conjunction with a CPT code shall be as established in this section.

(1) A service reported with a two (2) digit modifier of "51" shall be reimbursed at fifty (50) percent of the fee listed on the Medicaid Physician Fee Schedule for the service.

(2) A professional component of a service reported by the addition of the two (2) digit modifier "26" shall be reimbursed at the product of:

(a) The Medicare value assigned to the physician's work; and

(b) The dollar conversion factor specified in Section 3(2) of this administrative regulation.

(3) A technical component of a service reported by the addition of the two (2) letter modifier "TC" shall be reimbursed at the product of:

(a) The Medicare value assigned to the practice expense involved in the performance of the procedure; and

(b) The dollar conversion factor specified in Section 3(2) of this administrative regulation.

(4) A bilateral procedure reported by the addition of the two (2) digit modifier "50" shall be reimbursed at 150 percent of the amount assigned to the CPT code.

(5) An assistant surgeon procedure reported by the addition of the two (2) digit modifier "80" shall be reimbursed at sixteen (16) percent of the allowable fee for the primary surgeon.

(6) A procedure performed by a physician acting as a locum tenens physician for a Medicaid-participating physician reported by the addition of the two (2) character modifier "Q6" shall be reimbursed at the Medicaid Physician Fee Schedule amount for the applicable CPT code.

(7) An evaluation and management telehealth consultation service provided by a telehealth provider or telehealth practitioner

Section 2. Standard Reimbursement. (1) Reimbursement for a

in accordance with 907 KAR 3:170 and reported by the appropriate letter modifier, as applicable, shall be reimbursed at the Medicaid Physician Fee Schedule amount for the applicable evaluation and management CPT code.

(8) A level II national healthcare common procedure coding system modifier designating a location on the body shall be reimbursed at the Medicaid Physician Fee Schedule amount for the applicable code.

Section 6. Laboratory, Venipuncture, and Catheter. (1) Except for a service specified in paragraph (a) or (b) of this subsection, a physician laboratory service shall be reimbursed in accordance with 907 KAR 1:028.

(a) Charges for a laboratory test performed by dipstick or reagent strip or tablet in a physician's office shall be included in the office visit charge.

(b) A routine venipuncture procedure shall not be separately reimbursed if submitted with a charge for an office, hospital, or emergency room visit or in addition to a laboratory test.

(2) Reimbursement for placement of a central venous, arterial, or subclavian catheter shall be:

(a) Included in the fee for the anesthesia if performed by the anesthesiologist;

(b) Included in the fee for the surgery if performed by the surgeon; or

(c) Included in the fee for an office, hospital, or emergency room visit if performed by the same provider.

(3) A laboratory test performed with microscopy shall be reimbursed separately from an evaluation and management CPT code.

Section 7. Delivery-Related Anesthesia, Anesthesia Add-On Services, and Oral Surgery-Related Anesthesia. (1) The department shall reimburse as follows for the following delivery-related anesthesia services:

(a) For a vaginal delivery, the lesser of:

1. \$215; or
2. The actual billed charge;

(b) For a cesarean section, the lesser of:

1. \$335; or
2. The actual billed charge;

(c) For neuroaxial labor anesthesia for a vaginal delivery or cesarean section, the lesser of:

1. \$350; or
2. The actual billed charge;

(d) For an additional anesthesia for cesarean delivery following neuroaxial labor anesthesia for vaginal delivery, the lesser of:

1. Twenty-five (25) dollars; or
2. The actual billed charge;

(e) For an additional anesthesia for cesarean hysterectomy following neuroaxial labor anesthesia, the lesser of:

1. Twenty-five (25) dollars; or
2. The actual billed charge.

(2) For an anesthesia add-on service provided to a recipient under the age of one (1) year or over the age of seventy (70) years, the department shall reimburse the lesser of:

- (a) Twenty-five (25) dollars; or
- (b) The actual billed charge.

(3) For deep sedation or general anesthesia relating to oral surgery performed by an oral surgeon, the department shall reimburse the lesser of:

- (a) \$150; or
- (b) The actual billed charge.

Section 8. Medical Direction of Anesthesia and Anesthesia Under Medical Direction Services. (1) A provider or facility performing medical direction shall comply with all Medicare requirements to perform medical direction services located in 42 C.F.R. 415.110 and as found in the Medicare Claims Processing Manual, Chapter 12, Section 50, Paragraph C, as those Medicare requirements existed at the time of the applicable claim submission. This is a link to the Medicare Claims Processing Manual, Chapter 12, as it existed in July 2021: <https://www.cms.gov/Regulations-and->

<https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/clm104c12.pdf>.

(2) A reimbursement shall not be made for an anesthesiologist assistant or a student registered nurse anesthetist unless those provider types are:

- (a) Otherwise eligible for licensure or certification;
- (b) Appropriately enrolled with the department; and
- (c) If applicable, a managed care organization.

Section 9. Vaccines. (1) The department shall reimburse administration of a:

(a) Pediatric vaccine to a recipient under the age of nineteen (19) years; or

(b) Flu vaccine to a recipient of any age.

(2)(a) The department shall reimburse for the cost of a vaccine administered to a recipient under nineteen (19) years of age, in addition to administration of the vaccine, for a vaccine that is:

— 1. administered to ~~a~~the recipient by a ~~provider~~physician; and

— 2. ~~Not available free through the Vaccines for Children Program in accordance with 42 U.S.C. 1396s~~.  
(b) For those providers who are enrolled in the Vaccines for Children Program, the department shall not reimburse for the cost of a vaccine if the vaccine is readily available at the provider's facility and free through the Vaccines for Children Program in accordance with 42 U.S.C. 1396s, and 907 KAR 1:680.

Section 10. Physician Assistant. Reimbursement for a service provided by a physician assistant shall be seventy-five (75) percent of the amount reimbursable to a physician in accordance with this administrative regulation.

Section 11. Reimbursement Limits and Related Requirements.

(1)~~(a) Except for chemotherapy administration to a recipient under the age of nineteen (19) years, reimbursement for an evaluation and management service with a corresponding CPT code of 99214 or 99215 shall be limited to two (2) per recipient per provider per calendar year.~~

— ~~(b) A claim for an evaluation and management service with a corresponding CPT code of 99214 or 99215 submitted in excess of the limit established in paragraph (a) of this subsection shall be reimbursed as an evaluation and management service with a corresponding CPT code of 99213.~~

— ~~(c) A claim for an evaluation and management service of moderate or high complexity in excess of the limit established in paragraph (a) of this subsection shall be reimbursed at the Medicaid rate for the evaluation and management service representing medical decision-making of low complexity.~~

— (2) Reimbursement for an anesthesia service shall include:

- (a) Preoperative and postoperative visits;
- (b) Administration of the anesthetic;
- (c) Administration of fluids and blood incidental to the anesthesia or surgery;

(d) Postoperative pain management until discharge from the recovery area;

(e) Preoperative, intraoperative, and postoperative monitoring services; and

(f) Insertion of arterial and venous catheters.

(2)~~(3)~~ With the exception of an anesthetic, contrast, or neurolytic solution, administration of a substance to a recipient by epidural or spinal injection for the control of chronic pain shall be limited to three (3):

- (a) Injections per date of service; and
- (b) Dates of service per six (6) month period.

~~(3)~~~~(4)~~ If related to the surgery and provided by the physician who performs the surgery, reimbursement for a surgical procedure shall include the following:

- (a) A preoperative service;
- (b) An intraoperative service; and
- (c) A postoperative service and follow-up care within:

1. Ninety (90) calendar days following the date of major surgery; or

2. Ten (10) calendar days following the date of minor surgery.

~~(4)~~~~(5)~~ Reimbursement for the application of a cast or splint shall be in accordance with 907 KAR 1:104, Section 3(4).

~~(5)~~~~(6)~~ Multiple surgical procedures performed by a physician



during the same operative session shall be reimbursed as follows:

(a) The major procedure, an add-on code, and other CPT codes approved by the department for billing with units shall be reimbursed in accordance with Section 3(1)(a) or (2)(b) of this administrative regulation; and

(b) The additional surgical procedure shall be reimbursed at fifty (50) percent of the amount determined in accordance with Section 3(1)(a) or (2)(b) of this administrative regulation.

~~(6)~~~~(7)~~ If performed concurrently, separate reimbursement shall not be made for a procedure that has been determined by the department to be incidental, integral, or mutually exclusive to another procedure.

~~(7)~~~~(8)~~ The department shall not reimburse for an evaluation and management CPT code unless:

(a) Direct physician contact occurred during the visit; or

(b) Direct physician contact is not required in accordance with 907 KAR 3:005, Section 3(2).

Section 12. Other Provider Preventable Conditions. In accordance with 907 KAR 14:005, the department shall not reimburse for other provider preventable conditions.

Section 13. Supplemental Payments. (1) In addition to a reimbursement made pursuant to Sections 2 through 11 of this administrative regulation, the department shall make a supplemental payment to a medical school faculty physician:

(a) Who:

1. Is licensed to practice medicine or osteopathy in Kentucky;

2. Is enrolled in the Kentucky Medicaid program in accordance with 907 KAR 1:672;

3. Is participating in the Kentucky Medicaid program in accordance with 907 KAR 1:671;

4. Is employed by a state university teaching hospital, a pediatric teaching hospital, or a state university school of medicine that is part of a university health care system; and

5. Agrees to assign his or her Medicaid reimbursement, in accordance with 42 C.F.R. 447.10, to the state university entity with whom the physician is employed; and

(b) For services provided:

1. Directly by the medical school faculty physician; or

2. By a resident working under the supervision of the medical school faculty physician.

(2) A supplemental payment plus other reimbursements made in accordance with this administrative regulation shall:

(a) Not exceed the physician's charge for the service provided; and

(b) Be paid directly or indirectly to the medical school.

(3) A supplemental payment made in accordance with this section shall be:

(a) Based on the funding made available through an intergovernmental transfer of funds for this purpose by a state-supported school of medicine meeting the criteria established in subsection (1) of this section;

(b) Consistent with the requirements of 42 C.F.R. 447.325; and

(c) Made on an annual~~[a quarterly]~~ basis.

Section 14. The department shall reimburse for physician administered drugs in accordance with 907 KAR 23:020.

Section 15. Not Applicable to Managed Care Organizations. (1) A managed care organization may elect to reimburse the same amount for physician services as the department does.

(2) A managed care organization shall not be required to reimburse the same amount as established in this administrative regulation for a physician service reimbursed by the department via this administrative regulation.

Section 16. Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

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

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

Section 17. Appeal Rights. (1) An appeal of a department decision regarding a Medicaid recipient based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

(2) An appeal of a department decision regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a department decision regarding a Medicaid provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 9, 2022

FILED WITH LRC: September 12, 2022 at 12:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 28, 2022, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by November 17, 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 November 30, 2022. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles, Policy Analyst

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes reimbursement requirements for physician services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the department's reimbursement for physician services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing reimbursement policies for physician services provided within Kentucky Medicaid.

(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 reimbursement policies for physician services.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation clarify that only providers enrolled in the Vaccines for Children Program cannot receive reimbursement for the cost of the vaccine if the vaccine is readily available in the enrolled provider's facility. In addition, DMS is making a provider friendly modification that will allow for additional evaluation and management codes to be utilized by providers over the course of a year. This amendment will allow for evaluation and management services to comply with a

recent Centers for Medicare and Medicaid Services reorganization of evaluation and management codes. Finally, the supplemental payment schedule is amended to reflect current practice and federal approval by becoming an annual and not a quarterly payment.

(b) The necessity of the amendment to this administrative regulation: These changes are needed to increase vaccine availability and to increase provider engagement with certain patients.

(c) How the amendment conforms to the content of the authorizing statutes: These changes to this administrative regulation assist to increase vaccine availability and to clarify the interrelationship between the VFC program and vaccines that are not reimbursed via the VFC program. In addition, the federal government has recently changed its practices relating to evaluation and management codes, and it is appropriate for DMS to implement that change with this administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: These changes assist in clarifying the interrelationship between the VFC program and providers who are not enrolled in the VFC program.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Any Medicaid provider who administers or wishes to administer vaccines. There are over 59,000 enrolled providers within the Medicaid program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. No action is required for the entities to begin complying with 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). DMS does not expect entities to incur additional expenses in complying with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Entities will be able to provide vaccinations and receive reimbursement through the Medicaid program more accurately and promptly. Other providers will be able to more consistently provide higher level evaluation and management services to comply with a recent Centers for Medicare and Medicaid Services reorganization of evaluation and management codes.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates costs of \$55,000 to implement this administrative regulation. These costs relate to removing restrictions on the evaluation and management codes. The state share of the funds will be \$11,000.

(b) On a continuing basis: The Department for Medicaid Services (DMS) anticipates costs of \$55,000 (\$11,000 state funds) to remove restrictions on evaluation and management codes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching funds from general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: DMS will request additional funding as necessary to remove restrictions from certain evaluation and management codes.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendments to this administrative regulation neither establish nor increase any fees.

(9) Tiering: Is tiering applied? No. Tiering was not applied as the policies apply equally to the regulated entities.

## FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(10)(B)

(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).

(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.

## 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 (DMS) will be affected by the amendment to this administrative regulation.

(2) Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(1); 42 U.S.C. 1396a(a)(10)(B)

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

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

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

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates costs of \$55,000 to implement this administrative regulation. These costs relate to removing restrictions on the evaluation and management codes. The state share of the funds will be \$11,000.

(d) How much will it cost to administer this program for subsequent years? The Department for Medicaid Services (DMS) anticipates costs of \$55,000 (\$11,000 state funds) to remove restrictions on evaluation and management codes.

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 anticipates that cost savings of at least \$55,000 (\$11,000 state funds) 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

anticipates that cost savings of at least \$55,000 (\$11,000 state funds) 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 Community Based Services**  
**Division of Family Support**  
**(Amendment)**

**921 KAR 2:017. Kentucky Works Program (KWP) supportive services.**

RELATES TO: KRS 45.237-241, 205.200, 205.211, 205.2003, 45 C.F.R. [Parts]260-265[, 42 U.S.C. 601-619]

STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2), 205.2003(1), 42 U.S.C. 601-619

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS Chapter 205 requires the Cabinet for Health and Family Services to administer [the] public assistance programs. KRS 205.200(2) requires the secretary to promulgate administrative regulations prescribing the conditions of eligibility for public assistance, in conformity with the Social Security Act, 42 U.S.C. 601 to 619, and federal regulations. KRS 205.2003(1) requires the cabinet to promulgate administrative regulations to develop a work program for recipients of public assistance to provide for immediate employment or preparation for employment, and to provide supportive services to assist in the pursuit of work and self-sufficiency. This administrative regulation establishes requirements for receiving Kentucky Works Program (KWP) supportive services in accordance with Temporary Assistance for Needy Families (TANF) provisions established in 45 C.F.R. 260-265.

Section 1. Definitions. (1) "Approved KWP activity" means participation in a countable[an allowable] activity in accordance with 921 KAR 2:370, Section 2(1)(c).

(2) "Component" means a service or activity in accordance with 921 KAR 2:370, Section 2(1)(c).

(3) "Component preparation" means the period in which assessment, testing, completion of the transitional assistance agreement[, in accordance with 921 KAR 2:370, and referral for removal of barriers takes place.

(4) ["Employed" means a person performs a physical or mental activity in exchange for direct monetary compensation.

(5) "Improper payment" is defined by KRS 45.237(1)(f)[45.237(4)(d)].

(5)[(6)] "Kentucky Transitional Assistance Program" or "KTAP"[K-TAP] means the program established in 921 KAR

2:006[Kentucky's "Temporary Assistance for Needy Families" or "TANF" money payment program for a child as defined in 921 KAR 2:006].

(6)[(7)] "Kentucky Works Program" or "KWP" means the program established in 921 KAR 2:370[a program, in accordance with 921 KAR 2:370, that assists a recipient of K-TAP in obtaining education, training, experience, and employment necessary to leave public assistance].

(7)[(8)] "Precomponent" means a waiting period between the dates of component assignment and component commencement.

(8)[(9)] "Preemployment" means a waiting period between the dates of hiring and employment commencement.

(40)] "Work-eligible individual" is defined by 45 C.F.R. 261.2(n).

Section 2. Kentucky Works Program (KWP) Participation and Supportive Services Payment. The cabinet shall make a payment for a supportive service cost:

(1) For an individual participating in the KWP, except for the restrictions established[exclusions listed] in Section 12(2) of this administrative regulation;

(2) Necessary for participation in an approved KWP activity; and

(3) To the extent funds are available.

Section 3. Transportation. Transportation reimbursement shall be paid in the following situations:

(1) Precomponent;

(2) Component preparation; or

(3) Component participation.

Section 4. Transportation Payment Amount and Authorization.

(1)(a) To the extent funds are available, payment for transportation pursuant to paragraph (b) or (c) of this subsection shall be provided for an individual participating in an approved KWP activity, if:

1. Free transportation that meets the needs of the work-eligible individual is unavailable; and

2. The individual is required to incur a transportation expense in order to participate.

(b) If a need for transportation reimbursement for six (6)[four (4)] days or more is determined, a direct payment of \$300[\$200] per month to the individual shall be made through the Online Tracking Information System (OTIS).

(c) If a need for transportation reimbursement for five (5) days or less [than four (4) days] is determined, a payment of fifty (50)[fifteen (15)] dollars per month to the individual shall be made through the OTIS.

(2) A payment shall be issued in accordance with 921 KAR 2:050.

(3) In precomponent, if necessary to guarantee that the transportation arrangement shall be maintained[not be lost], a transportation payment shall be provided for the period of up to:

(a) Two (2) weeks prior to the scheduled start of component activity; or

(b) One (1) month during a break in component activity if subsequent component activity is scheduled to begin within that period.

Section 5. Restriction on Authorization of a Transportation Payment. A transportation payment shall not be made if the work-eligible individual is not in compliance with a KWP activity, in accordance with 921 KAR 2:370.

Section 6. Other Supportive Services. (1) To the extent funds are available, the cabinet shall provide other supportive services to a work-eligible individual if necessary for the individual's participation in the approved KWP activity for:

(a) Component preparation;

(b) Component participation while the KTAP[K-TAP] case remains active; or

(c) Acceptance of a new job or retention of an existing one if the parent or other adult:

1. Has accepted employment and a start date of employment

is provided, except if an item is required as a condition of being hired by the employer; or

2. Is employed.

(2) If requirements of subsection (1) of this section are met, the cabinet may approve an item or service needed by the work-eligible individual for participation in a KWP activity, such as:

(a) A drug screening test fee;

(b) Up to three (3) uniforms for employment, if:

1. Not reimbursable by the employer; and

2. The work-eligible individual provides an estimate;

(c) One (1) suitable interview outfit for pre-employment purposes;

(d) Required clothing or shoes particular to a service, profession, or company, if:

1. Not reimbursable by the employer; and

2. The work-eligible individual provides an estimate;

(e) School supplies and books for the KWP participant;

(f) A licensing fee, which includes:

1. Exam costs required to obtain a professional license or certificate; or

2. Driver's license fee;

(g) A timepiece necessary for employment or training;

(h) The cost to obtain or renew ~~have~~ a photo identification;

(i) The cost of a criminal records check fee, if required by the provider or employer;

(j) A driver's education class fee; or

(k) Tools required for employment.

(3) Payment for other supportive services shall be limited to a cumulative total of ~~\$600~~ \$400 per individual in a twelve (12) month period, beginning with the first day ~~[in which]~~ the initial form "KW-32, Authorization for Supportive Services Payments", is issued to the work eligible individual.

(4) A penalized or sanctioned work-eligible individual shall not be eligible for other supportive services.

(5) A retroactive payment for other supportive services shall not be made for an item purchased by a penalized or sanctioned work-eligible individual who later cures the penalty. After the individual cures the penalty or sanction, an eligible expense may be authorized.

(6) Except in accordance with Section 7 of this administrative regulation, a medical service or item shall not be an allowable supportive service.

Section 7. Allowable Medical Service or Item. To the extent that non-Temporary Assistance for Needy Families (TANF) funding is available, the purchase of the following item or service shall be allowed for a work-eligible individual, if needed for participation in the KWP activity and not reimbursable through Medicaid and limited to:

(1) Eyeglasses or corrective lens;

(2) Dentures;

(3) Hearing aids; and

(4) Medical service or item required as a condition of employment.

Section 8. Vehicle ~~Car~~ Repairs. (1) If a free service for vehicle ~~car~~ repairs, including a vocational school automotive program, is unavailable that meets the needs of the work-eligible individual, a vehicle ~~car~~ repair expenditure shall be provided, to the extent funds are available, if necessary for participation in the approved KWP activity of:

(a) Component preparation; or

(b) Component participation, including employment while the KTAP ~~K-TAP~~ case remains active. If a KWP participant requests a vehicle repair expenditure prior to KTAP case discontinuance, but the request is not processed by the cabinet prior to discontinuance and the participant is otherwise eligible, the discontinued KWP participant shall be eligible for vehicle repair assistance.

(2) A vehicle ~~Car~~ repair expense shall meet the following criteria to be considered for payment:

(a) A vehicle ~~Car~~ repair that makes the vehicle ~~car~~ functional;

(b) Property tax on the vehicle;

(c) Vehicle registration;

(d) Licenses fee;

(e) Up to six (6) ~~three (3)~~ months coverage of liability insurance for the work-eligible individual to drive a vehicle;

(f) A new ~~New~~ or used automotive part to be purchased by the work-eligible individual to make the vehicle ~~car~~ functional; or ~~and~~

(g) Other vehicle ~~car~~ expense needed by the work-eligible individual that would allow participation in the KWP activity.

(3) Prior to the approval of a vehicle ~~car~~ repair expenditure listed in subsection (2) of this section, the work-eligible individual shall provide an estimate of the cost.

(4) Vehicle ~~Auto~~ repair work shall:

(a) Be completed by a garage, unless the repair is completed by a vocational school automotive program; or

(b) Be the responsibility of the work-eligible individual if a payment is made for a new or used automotive part as specified in subsection (2)(f) of this section.

(5) Prior to approval of a vehicle ~~car~~ repair expenditure, the cabinet shall verify the work-eligible individual owns the vehicle.

(6) The restrictions on authorization and verification of a supportive service payment described in Section 12 of this administrative regulation shall apply to a vehicle ~~car~~ repair expense and payment.

(7) Payment for vehicle ~~car~~ repairs shall be limited to a cumulative total of ~~\$3,000~~ \$1,500 per eligible family during a twelve (12) month period, beginning with the first day of the month in which the initial payment is issued.

Section 9. Short-term Training. To the extent funds are available, a fee for a short-term training program shall be eligible for payment for a work-eligible individual if the training program is:

(1) Not eligible for federal financial aid; and

(2) Likely to lead to paid employment, in accordance with:

(a) The work-eligible individual's transitional assistance agreement; and

(b) 921 KAR 2:370.

Section 10. Required Fees. (1) To the extent funds are available, the following payment may be made for a work-eligible individual in compliance with KWP requirements:

(a) A training registration fee;

(b) Financial aid application fee;

(c) Testing fee;

(d) Application fee required by a vocational school for a specified program;

(e) Liability insurance fee;

(f) Copy of records fee;

(g) Activity fee if mandated by the institution; or

(h) Other required fee.

(2) Required fees shall not exceed ~~\$400~~ \$200 per payment.

Section 11. Educational Bonus. (1) An educational bonus of ~~\$500~~ \$250 per individual shall be paid to a KTAP ~~K-TAP~~ adult or child who reports and verifies:

(a) Receiving a:

1. High school diploma;

2. GED certificate; or

3. Postsecondary school certificate or degree; or

(b) Graduating from English as a second language (ESL) class.

(2) A short-term training program shall not qualify for postsecondary education.

(3) A KTAP ~~K-TAP~~ adult or child shall be limited to only one (1) payment for:

(a) Receiving a postsecondary certificate or degree; or

(b) Graduating from an English as a second language (ESL) class.

(4) A KTAP ~~K-TAP~~ adult or child shall earn the diploma, certificate, or degree while receiving KTAP ~~K-TAP~~.

(5) A KTAP ~~K-TAP~~ applicant or recipient shall be advised of the educational bonus and be reminded of available work incentives:

(a) During application;

(b) At recertification; and

(c) Through periodic mailings.

Section 12. Restrictions on Authorization of Supportive Service Payments. (1)(a) To verify an expense and authorize a supportive service payment, except as provided in Section 5 of this administrative regulation, the[a] KW-32 form shall be completed.

(b) A KW-32 shall be valid for thirty (30) calendar days from the date issued by the cabinet.

(2) A payment shall not be made for the period during which:

(a) A valid KW-32 form is not returned; or

(b) The work-eligible individual is:

1. Penalized for noncompliance with a KWP activity, as specified in 921 KAR 2:370; or

2. Ineligible.

(3) A supportive service payment shall be issued in accordance with 921 KAR 2:050.

Section 13. Hearings and Appeals. An applicant or recipient of KWP supportive services who is dissatisfied with an action or inaction on the part of the cabinet shall have the right to a hearing in accordance with 921 KAR 2:055.

Section 14. Improper Payments. The cabinet shall recover the amount of an improper payment pursuant to KRS 45.237-241 and 205.211, including assistance paid pending the outcome of a hearing, from the claimant-payee.

Section 15. Incorporation by Reference. (1) The "KW-32, Authorization for Supportive Services Payments", 09/22/12/45], is incorporated by reference.

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

MARTA MIRANDA-STRAUB, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 6, 2022

FILED WITH LRC: September 12, 2022 at 12:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 28, 2022, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by November 17, 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 November 30, 2022. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Laura Begin, Staff Assistant

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes eligibility criteria regarding supportive services for the Kentucky Works Program (KWP). KWP is the work program for participants in the Kentucky Transitional

Assistance Program (KTAP).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the eligibility and issuance criteria of supportive services for the Kentucky Works Program (KWP).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 194A.050, which authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to qualify for federal funds and to cooperate with other state and federal agencies. This cabinet has responsibility under 45 C.F.R. 260-265 to implement the federal Temporary Assistance for Needy Families (TANF) program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation assists in the effective administration of the statutes by establishing eligibility and issuance criteria for the supportive services of the Kentucky Works Program (KWP).

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

(a) How the amendment will change this existing administrative regulation: This amendment changes the existing administrative regulation by updating companion program names, modernizes language consistent with other KTAP administrative regulations in process, and updates the financial assistance amounts provided to individuals who have needs relating to transportation, vehicle repairs, and fees in order to participate in a KWP activity. The KW-32 form incorporated by reference is being amended to update the total cost of items and support services.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary in order to utilize federal funding in providing KTAP and resources for individuals to participate in the Kentucky Works Program. This amendment is also necessary to keep the administrative regulation from expiring pursuant to KRS 13A.3102 and 3104. The administrative regulation was reviewed for certification and determined to require updating.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by maintaining standards for program eligibility, supportive service issuance requirements, and compliance.

(d) How the amendment will assist in the effective administration of the statutes: The amendment allows for greater utilization of the TANF-funded Kentucky Works Program (KWP) in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department for Community Based Services (DCBS) administers this program throughout Kentucky's 120 counties.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no additional requirements included for Kentucky Works Program participants.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): DCBS will have minor costs associated with data system changes. Costs to the agency related to supports provided are funded by the federal TANF Block Grant. There are no costs to KWP participants.

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

Greater supports related to required transportation will be provided.

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

(a) Initially: There is anticipated to be only minor data system costs associated with this amendment. The implementation and enforcement of this administrative regulation is funded by the federal TANF Block Grant.

(b) On a continuing basis: The implementation and enforcement of this administrative regulation is funded by the

federal TANF Block Grant.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this administrative regulation is funded by the federal TANF Block Grant.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fees or funding required by 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 is not applied because this administrative regulation will be applied in a like manner statewide.

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 45 C.F.R. 260-265, 42 U.S.C. 601-619

(2) State compliance standards. KRS 194A.050(1), 205.200(2), 205.2003(1)

(3) Minimum or uniform standards contained in the federal mandate. Operating a state program consistent with the rules of the Temporary Assistance for Needy Families Block Grant. Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives; End the dependence of needy parents on government benefits by promoting job preparation, work, and marriage; Prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and Encourage the formation and maintenance of two-parent families.

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

(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 Department for Community Based Services will be impacted by this administrative regulation by administering this program.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 45 C.F.R. Parts 260-265, 42 U.S.C. 601-619, KRS 194A.050(1), 205.200(2), 205.2003(1).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This program does provide assistance to eligible low-income individuals participating in the Kentucky Works Program and this assistance will likely be spent in their local communities. The amount of revenue depends on program participation.

(b) How 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 program does provide assistance to eligible low-income individuals participating in the Kentucky Works Program and this assistance will likely be spent in their local communities. The amount of revenue depends on program participation.

(c) How much will it cost to administer this program for the first year? The cabinet will utilize the administrative funds available

under the federal TANF Block Grant to administer these programs in the first year.

(d) How much will it cost to administer this program for subsequent years? The cabinet will utilize the administrative funds available under the federal TANF Block Grant to administer these programs in subsequent years.

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 are not generated by this administrative regulation, but it also does not require costs from regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There are no cost savings associated with this amendment.

(c) How much will it cost the regulated entities for the first year? There are no costs to regulated entities associated with this amendment.

(d) How much will it cost the regulated entities for subsequent years? There are no costs to regulated entities associated with this amendment.

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

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 or a negative or adverse economic impact on any parties, but rather provides supports for eligible, working individuals.

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Family Support (Amendment)

#### 921 KAR 2:035. Right to apply and reapply.

RELATES TO: KRS 194A.060, 205.175, 205.177, 205.200(1), 205.240, 205.245, 45 C.F.R. 206.10, 42 U.S.C. 601-619, 52 U.S.C. 20506[1973gg-5]

STATUTORY AUTHORITY: KRS 116.048(1), 194A.050(1), 205.200(2), ~~42 U.S.C. 601-619~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 205.200, 205.240, and 205.245 require the Cabinet for Health and Family Services to administer the Kentucky Transitional Assistance Program [KTAP][~~(K-TAP)~~] and the State Supplementation Program (SSP) for persons who are aged, blind, or have a disability in conformity with the Social Security Act, 42 U.S.C. 601 to 619, and federal regulations. KRS 116.048 designates the cabinet ~~[to have responsibility for the administration of public assistance programs]~~ as a voter registration agency in accordance with 52 U.S.C. 20506[42 U.S.C. 1973gg-5]. This administrative regulation establishes policy and procedures necessary to apply for assistance and provide an eligible public assistance participant the opportunity to register, or to decline from registering, to vote.

Section 1. Right to Apply or Reapply. (1) An individual may apply or reapply for KTAP[K-TAP] or SSP through the Department for Community Based Services (DCBS).

(2) An application shall have been made on the date:

(a) An individual makes an application by telephone or online;

(b) An individual or the individual's authorized representative is in the DCBS office and signs an application form incorporated by reference in 921 KAR 2:040; or

(c) DCBS is contacted for special accommodations due to an impairment or disability.

(3) If an individual is physically unable to come to the office to apply, the individual may:

(a) Designate an authorized representative to apply;

(b) Request a home visit to complete the application process; or

(c) Make an application by telephone or online.

(4) The applicant may be:

(a) Assisted by an individual of the applicant's choice in the application process; and

(b) Accompanied by this individual in a contact with DCBS.

(5) In accordance with 920 KAR 1:070, interpreter services shall be provided for persons who are:

(a) Deaf; or

(b) Hard of hearing.

(6) Interpreter services shall be provided for a non-English speaking individual, utilizing procedures and forms established in[specified by] 920 KAR 1:070.

(7) The cabinet shall not discriminate against an applicant based on age, race, color, sex, gender, disability, religion, sexual orientation, national origin[,], or ancestry, political beliefs, or reprisal or retaliation for prior civil rights activity.

Section 2. Who May Sign an Application. (1) Except for a case based on incapacity, an application for KTAP[K-TAP] shall be signed by:

(a) The relative with whom a needy child lives;

(b) The legally appointed guardian of the relative; or

(c) A representative authorized in writing to act on behalf of the relative.

(2) An application for KTAP[K-TAP] based on incapacity shall be signed by:

(a) An individual listed in subsection (1) of this section; or

(b) An interested party acting on behalf of the applicant.

(3) An application for SSP shall be signed by:

(a) The individual who is aged, blind, or has a disability;

(b) An interested party;

(c) The legally appointed guardian for the individual who is aged, blind, or has a disability; or

(d) The representative payee receiving the Supplemental Security Income (SSI) benefit.

Section 3. Action on Applications. (1) A decision shall be made on an application and payment made within:

(a) Forty-five (45) days for KTAP[K-TAP] or SSP pursuant to 45 C.F.R. 206.10; or

(b) Ninety (90) days for SSP determinations in which permanent and total disability shall be established.

(2) Exception to this time standard may be made:

(a) If the applicant is unable to obtain necessary verification for a determination of eligibility; or

(b) For failure or delay, that cannot be controlled by DCBS, on the part of the applicant or examining physician.

(3) The case record shall document the cause for the delay if the time standards are not met.

(4) Failure to process an application within the time frame shall not be used as the basis for denial.

Section 4. Voter Registration. In accordance with KRS 116.048 and 52 U.S.C. 20506[42 U.S.C. 1973gg-5], an applicant or recipient shall be provided the opportunity to complete an application to register to vote or update his or her current voter registration in accordance with 921 KAR 3:030, Section 8.

Section 5. Disclosure of Information. Use or disclosure of

information obtained from applicant households, exclusively for the program, shall be restricted pursuant to KRS 194A.060, 205.175, and 205.177.

MARTA MIRANDA-STRAUB, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 6, 2022

FILED WITH LRC: September 12, 2022 at 12:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 28, 2022, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by November 17, 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 November 30, 2022. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes application and reapplication criteria for the Kentucky Transitional Assistance Program (KTAP) and the State Supplementation Program (SSP).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the application and reapplication criteria for KTAP and SSP and contains federal mandates relating to providing an eligible public assistance recipient the opportunity to register, or to decline from registering, to vote.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 194A.050, which requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to qualify for federal funds and to cooperate with other state and federal agencies. This cabinet has responsibility under 45 C.F.R. 260-265 to implement the federal Temporary Assistance for Needy Families (TANF) program through KTAP and has the responsibility to act as a voter registration agency.

(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 application criteria for KTAP and SSP.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates program names and language consistent with other regulatory amendments in process, includes changes in DCBS service delivery by including online application options, updates the federal citation associated with voter registration, and updates the non-discrimination statement in accordance with federal rules.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary for consistency with

other regulatory amendments in process and to update language and references in compliance with federal law.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 194A.050, which requires the secretary to promulgate administrative regulations necessary to qualify for federal funds and to cooperate with other state and federal agencies. The cabinet is required to implement the federal TANF program and to act as a voter registration agency.

(d) How the amendment will assist in the effective administration of the statutes: The amendment is necessary in order to utilize federal TANF funding in providing KTAP services to eligible applicants.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department for Community Based Services (DCBS) administers this program throughout Kentucky's 120 counties. DCBS maintains a statewide call service center and website to serve clients applying and reapplying pursuant to this administrative regulation. As of April 2022, there were approximately 10,422 KTAP cases throughout 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: There are no additional requirements for KTAP applicants or recipients in this amendment. The amendment includes that individuals may apply online if they wish to do so.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants are able to apply for KTAP and SSP online in addition to previously-allowed methods.

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

(a) Initially: There are no costs associated with this amendment.

(b) On a continuing basis: There are no 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: The implementation and enforcement of this administrative regulation is funded by the federal TANF Block Grant.

(7) Provide an assessment of whether an 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 cabinet will implement and enforce this administrative regulation in subsequent years with the TANF Block Grant.

(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 is not applied because this administrative regulation will be applied in a like manner statewide.

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 45 C.F.R. 206.10, 42 U.S.C. 601-619, 52 U.S.C. 20506

(2) State compliance standards. KRS 116.048(1), 194A.050(1), 205.200(2)

(3) Minimum or uniform standards contained in the federal mandate. Operating a state program consistent with the rules of the Temporary Assistance for Needy Families Block Grant (through KTAP). Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives; End the dependence of needy parents on government benefits by promoting job preparation, work, and marriage; Prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence

of these pregnancies; and Encourage the formation and maintenance of two-parent families.

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

(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 Department for Community Based Services will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 116.048(1), 194A.050(1), 205.200(2), 45 C.F.R. 206.10, 42 U.S.C. 601-619, 52 U.S.C. 20506.

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with this 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 are not generated by this administrative regulation.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There are no cost savings associated with this amendment.

(c) How much will it cost the regulated entities for the first year? There are no costs to regulated entities associated with this amendment.

(d) How much will it cost the regulated entities for subsequent years? There are no costs to regulated entities associated with this amendment.

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

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 does not have a major economic impact.



**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Community Based Services**  
**Division of Family Support**  
**(Amendment)**

**921 KAR 2:040. Procedures for determining initial and continuing eligibility.**

RELATES TO: KRS ~~Chapter 205~~[205.010, 205.200, 205.245], 42 U.S.C. 601-619

STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS Chapter 205 requires the Cabinet for Health and Family Services to administer the Kentucky Transitional Assistance Program (~~KTAP~~)[~~K-TAP~~] and the State Supplementation Program (SSP). KRS 205.200(2) requires the cabinet to prescribe, by administrative regulation, the conditions of eligibility for public assistance, in conformity with Title IV-A of the Social Security Act, 42 U.S.C. 601-619, and federal regulations. This administrative regulation establishes the procedures used to determine initial and continuing eligibility for assistance under these programs.

Section 1. Eligibility Determination Process. (1) A household shall, for the month payment is intended to cover the household, meet the eligibility criteria in:

- (a) 921 KAR 2:006 and 921 KAR 2:016 for ~~KTAP~~[~~K-TAP~~]; or
- (b) 921 KAR 2:015 for SSP.

(2) A household shall not receive assistance until approval of the application for benefits.

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

(4) The applicant or recipient shall be the primary source of information and shall be required to:

- (a) Furnish verification of:

- 1. Income;
- 2. Resources; and
- 3. Technical eligibility; and

(b) Give written consent to contacts necessary to verify or clarify a factor pertinent to the decision of eligibility.

(5) If informed in writing of the appointment or necessary information to be provided, failure of the applicant or recipient to appear for a scheduled interview or present required information when requested shall be considered a failure to present adequate proof of eligibility.

(6)(a) An application shall be considered filed if a "PA-77, Intent to Apply for ~~KTAP~~[~~K-TAP~~], Medicaid, State Supplementation, or Child Care Assistance", or a "PA-100, Application/Recertification for ~~KTAP or~~[~~K-TAP and~~] Kinship Care", containing the name, address, and signature of the applicant, is received by an office of the Department for Community Based Services (DCBS).

(b) An application shall be processed after the:

- 1. Applicant or representative is interviewed;
- 2. Required information and verification for the application is provided to the DCBS office; and
- 3. Application and related documents, pursuant to subsection (4) of this section, are received by the DCBS office.

(c) If an electronic form is not used, the cabinet shall record information for recertification to determine continuing eligibility for ~~KTAP~~[~~K-TAP~~] by using form PA-100.

Section 2. Continuing Eligibility. (1) The recipient shall be responsible for reporting, within ten (10) calendar days, any change in circumstances that may affect eligibility or the amount of payment.

(2) Eligibility shall be redetermined:

- (a) If a report is received or information is obtained about a change in a circumstance;
- (b) Every twelve (12) months for SSP cases; and

(c) Every twelve (12) months for ~~KTAP~~[~~K-TAP~~] cases.

Section 3. Child Care Assistance Program. Procedures used to determine initial and continued eligibility for the Child Care Assistance Program shall be in accordance with 922 KAR 2:160.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "PA-77, Intent to Apply for ~~KTAP~~[~~K-TAP~~], Medicaid, State Supplementation, or Child Care Assistance", 09/22[10/17]; and

(b) "PA-100, Application/Recertification for ~~KTAP or~~[~~K-TAP and~~] Kinship Care", 09/22[10/17].

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

MARTA MIRANDA-STRAUB, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 6, 2022

FILED WITH LRC: September 12, 2022 at 12:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 28, 2022, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by November 17, 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 November 30, 2022. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Laura Begin, Staff Assistant

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures used to determine initial and continuing eligibility for assistance provided through Kentucky's Temporary Assistance for Needy Families (TANF) program, the Kentucky Transitional Assistance Program (KTAP), and State Supplementation Program (SSP).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the eligibility procedures for KTAP and SSP.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation conforms to KRS 194A.050, which requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to qualify for federal funds and to cooperate with other state and federal agencies. This cabinet is required to implement state TANF programs pursuant to 45 C.F.R. 260-265.

(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 eligibility criteria for KTAP and SSP, required by statute.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes the existing administrative regulation by updating program names and making form revisions. Material incorporated by reference is being amended to update program names and language, clarify instructions, update state and federal contact information, collect additional education and financial resource information, include requirements around cooperating with Child Support Enforcement and registering for work, and to include prohibitions around utilizing an electronic benefits transfer (EBT) card at specific retailers outlined in House Bill 7 (Regular Session 2022) and authorizing state laws.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary in order to make program and language updates consistent with other administrative regulations and to include references relating to Child Support Enforcement and EBT card utilization prohibitions consistent with other authorizing statutes.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by maintaining standards for determining initial and continuing eligibility for Kentucky's TANF program, KTAP, and SSP.

(d) How the amendment will assist in the effective administration of the statutes: The amendment establishes procedures for programs required by statute and includes amendments consistent with recently passed legislation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department for Community Based Services (DCBS) administers this program. As of April 2022, there were approximately 10,422 KTAP cases throughout 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: Applicants applying or reapplying for KTAP or kinship care will have to provide additional information relating to financial resources, agree to cooperate with Child Support Enforcement, and agree to EBT card utilization prohibitions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Language in incorporated material being updated and clarified will improve accuracies in the eligibility determination process reducing the possibility for fraud, error, or claim.

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

(a) Initially: There are no costs associated.

(b) On a continuing basis: There are no costs associated with this amendment, but the implementation and enforcement of this administrative regulation is funded by the federal TANF Block Grant.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this administrative regulation is funded by the TANF Block Grant.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fees or funding required by 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 is not applied because this administrative regulation will be applied in a like manner statewide.

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 45 C.F.R. 260-265, 42 U.S.C. 601-619

(2) State compliance standards. KRS 194A.050(1), 205.200(2)

(3) Minimum or uniform standards contained in the federal mandate. Operating a state program consistent with the rules of the Temporary Assistance for Needy Families Block Grant. Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives; End the dependence of needy parents on government benefits by promoting job preparation, work, and marriage; Prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and Encourage the formation and maintenance of two-parent families.

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

(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 Department for Community Based Services will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 45 C.F.R. 260-265, 42 U.S.C. 601-619, KRS 194A.050(1), 205.200(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? This administrative regulation does not generate revenue.

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

(c) How much will it cost to administer this program for the first year? There are no costs associated with this amendment. The cabinet will utilize the administrative funds available under the TANF Block Grant to administer these programs.

(d) How much will it cost to administer this program for subsequent years? The cabinet will utilize the administrative funds available under the TANF Block Grant to administer these programs.

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 are not generated by this administrative regulation, but it also does not require costs from regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There are no cost savings associated with this amendment.

(c) How much will it cost the regulated entities for the first year? There are no costs to regulated entities associated with this

amendment.

(d) How much will it cost the regulated entities for subsequent years? There are no costs to regulated entities associated with this amendment.

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

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.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Community Based Services**  
**Division of Family Support**  
**(Amendment)**

**921 KAR 2:050. Time and manner of payments.**

RELATES TO: KRS 205.193, 205.200, 205.232, 205.220,  
205.245, 42 U.S.C. 601-619

STATUTORY AUTHORITY: KRS 194A.050(1), 205.220[,  
205.245, 42 U.S.C. 601-619]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate [all] administrative regulations authorized by applicable state laws and necessary to operate the programs and fulfill the responsibilities vested in the cabinet or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 205.220 establishes to whom payments of public assistance grants shall be made[prescribes who is eligible for public assistance] and requires the cabinet to prescribe by administrative regulation the time and manner of payments of public assistance grants for eligible individuals. KRS 205.245 provides for assistance[a money payment] to persons who are[the needy] aged, [needy] blind, or have a disability[and needy permanently and totally disabled]. This administrative regulation establishes the time and manner of payments for the Kentucky Transitional Assistance Program (KTAP)[K-TAP] and the Kentucky Works Program (KWP) in conformity with the Social Security Act, 42 U.S.C. 601 to [-] 619, and federal regulations. It also establishes the time and manner of State Supplementation Program (SSP) payments and Mental Illness or Intellectual Disability (MI/ID) Supplement Program payments.

Section 1. Authorization of KTAP [K-TAP] Payments. (1) Method of payment.

(a) A payment shall be issued monthly by:

1. Check;

2. Electronic benefit transfer (EBT); or

3. Direct deposit into a recipient's checking account upon completion by the recipient of the form "PA-63, Direct Deposit Authorization"[-, Form PA-63].

(b) A payment shall be issued prospectively.

(2) Initial payment.

(a) A KTAP[K-TAP] approval shall not be made for a period prior to the date of application.

(b) The effective date of an initial payment for a KTAP[K-TAP] approval shall be the date an application is filed if eligibility factors are met as of that date.

(c) If eligibility factors are not met as of the day of application, the approval shall be effective the date on which all factors are met.

(3) Subsequent and special payment.

(a) Except in a situation pursuant to paragraph (b) of this

subsection, a subsequent KTAP[K-TAP] payment shall be made for an entire month in which technical eligibility factors are met as of the first day of the month.

(b) A special payment shall be issued:

1. If the regular monthly payment received is less than the entitled amount based on a household circumstance; and

2. For a period of up to twelve (12) months preceding the month of error correction, if the error existed in the preceding months.

(4) Inalienability of payment.

(a) A KTAP[K-TAP] payment shall be unconditional and exempt from a remedy for the collection of a debt, lien, or encumbrance from an individual or agency other than the Cabinet for Health and Family Services.

(b) The Cabinet for Health and Family Services may initiate recoupment to recover overpayment of benefits pursuant to 921 KAR 2:016 or in accordance with KRS 205.193 or 205.200.

(c) The Cabinet for Health and Family Services shall make adjustments to an EBT account to correct an auditable, out-of-balance settlement condition that occurs during the redemption process as a result of a system error.

(5) EBT Account Inactivity.

(a) If an EBT account has not been debited in 365 days, the cabinet shall:

1. Expunge a monthly benefit on a monthly basis as each individual benefit month reaches a date that is 365 days in the past; and

2. Notify the household in writing:

a. That the household's EBT account has not been debited in the last 365 days; and

b. Of the amount of EBT benefits that have been expunged.

(b) If a recipient debits the EBT account, the expungement process shall cease.

(6) Eligible payee.

(a) Except as provided by paragraph (b) or (c) of this subsection, a cash assistance[A money] payment shall be issued in the name of the approved applicant.

(b) 1. Upon request of an individual specified in this subsection, a KTAP[K-TAP] payment for the month of death shall be reissued to the:

a.[1.] Widow or widower;

b.[2.] Parent;

c.[3.] Guardian; or

d.[4.] Executor or administrator of the estate.

2.[(e)] If the payment is reissued to an executor or administrator, a copy of the appointment order shall be obtained as verification.

(c) Payment to a protective payee may be made pursuant to KRS 205.232.

(7) In accordance with 42 U.S.C. 608(a)(12), a KTAP[K-TAP] payment received on EBT shall not be accessed via an EBT transaction, such as a point-of-sale terminal or an automated teller machine, at a:

(a) Liquor store;

(b) Business that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment;

(c) Casino;

(d) Gambling casino; or

(e) Gaming establishment.

(8) The terms used in subsection (7) of this section shall be defined in accordance with 42 U.S.C. 608(a)(12)(B).

Section 2. Supportive Services for KWP Participants. A supportive services payment for a KWP participant shall be made according to the type of service provided, as follows:

(1) A child care payment shall be issued pursuant to 922 KAR 2:160.

(2) A transportation payment pursuant to 921 KAR 2:017 shall be made directly to the KTAP[K-TAP] recipient.

(3) Other approved supportive services payments shall be made:

(a) Directly to the provider; and

(b) Within thirty (30) days of receipt of appropriate verification

of service delivery of billing, pursuant to 921 KAR 2:017.

Section 3. Authorization of an SSP payment. (1) Method of payment.

(a) A payment shall be issued monthly by:

1. Check; or

2. Direct deposit into a recipient's checking account following[upon] completion by the recipient of the PA-63[~~Direct Deposit Authorization form~~]; and

(b) A payment shall be issued prospectively.

(2) Initial payment.

(a) The effective date for SSP approval shall be the first day of the month in which:

1. An application is filed; and

2. Eligibility factors are met.

(b) An SSP payment shall be made for the entire month of which eligibility factors are met.

(3) Subsequent and special payment.

(a) A subsequent SSP payment shall be made for an entire month in which eligibility factors are met as of the first day of the month.

(b) A special payment shall be made:

1. If the regular monthly payment received is less than the entitled amount based on a household circumstance; and

2. For a period of up to twelve (12) months preceding the month of error correction, if the error existed in the preceding months.

(4) Inalienability of a payment.

(a) An SSP money payment shall be unconditional and is exempt from a remedy for the collection of a debt, lien, or encumbrance from an individual or agency other than the Cabinet for Health and Family Services.

(b) The Cabinet for Health and Family Services shall initiate recoupment to recover overpayment of benefits.

(5) Eligible payee.

(a) A money payment shall be issued in the name of the eligible applicant except as provided in paragraph (b) of this subsection.

(b) A money payment may be issued to the:

1. Legally appointed committee or guardian; or

2. Person serving as the representative payee for another statutory benefit such as Supplemental Security Income.

(c) Upon request of an individual specified in this subsection, an SSP payment for the month of death shall be reissued to the:

1. Widow or widower;

2. Parent;

3. Guardian; or

4. Executor or administrator of the estate.

(d) If the payment is reissued to an executor or administrator, a copy of the appointment order shall be obtained as verification.

Section 4. Authorization of Persons with MI/ID Supplement Program Payment. (1) Method of payment.

(a) The MI/ID supplement payment shall be made:

1. Quarterly;

2. By the last day of the month following the month that the certified quarter ends; and

3. Following receipt of appropriate documentation, pursuant to 921 KAR 2:015.

(b) The training reimbursement payment for the MI/ID Supplement Program shall be made:

1. Quarterly;

2. By the last day of the month following the month that the certified quarter ends; and

3. Following receipt of appropriate documentation, pursuant to 921 KAR 2:015.

(2) Initial payment.

(a) Following the notification to the Cabinet for Health and Family Services by the personal care home (PCH) of its intent to participate, the effective date of the MI/ID supplement shall be the first day of a month that certification requirements pursuant to 921 KAR 2:015 are met.

(b) If a Type A citation issued from the Office of Inspector General occurs, payment shall be made only for eligible months

pursuant to 921 KAR 2:015.

(3) A subsequent payment shall be made for a month within a quarter in which eligibility factors are met.

(4) Eligible payee.

(a) Payment for the MI/ID supplement shall be made to the participating PCH, meeting MI/ID certification requirements, for an eligible calendar quarter, pursuant to 921 KAR 2:015.

(b) Payment for the MI/ID training reimbursement shall be made to the participating PCH.

Section 5. Incorporation by Reference. (1) The "PA-63, Direct Deposit Authorization", 09/22[42/45], is incorporated by reference.

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

MARTA MIRANDA-STRAUB, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 6, 2022

FILED WITH LRC: September 12, 2022 at 12:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 28, 2022, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by November 17, 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 November 30, 2022. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Laura Begin, Staff Assistant

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes time and manner of payments criteria for Kentucky's Temporary Assistance for Needy Families (TANF) program, Kentucky Transitional Assistance Program (KTAP), and the State Supplementation Program (SSP).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the time and manner of payments for KTAP and SSP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 194A.050, which requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to qualify for federal funds and to cooperate with other state and federal agencies. This cabinet has responsibility under 45 C.F.R. 260-265 to implement the federal TANF program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing criteria for KTAP and SSP.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes the existing administrative regulation by updating program names consistent with other KTAP administrative regulation in process. The amendment also establishes provisions relating to the recoupment of benefits and protective payees, required by House Bill 7 from the 2022 Regular Session of the General Assembly. Material incorporated by reference is being amended to update instructions and agency contact information.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation was necessary to comply with the requirements of House Bill 7 (RS 2022). This amendment is also necessary to keep the administrative regulation from expiring pursuant to KRS 13A.3102 and 3104.

(c) How the amendment conforms to the content of the authorizing statutes: House Bill 7 provisions included in this amendment were codified as KRS 205.193, 205.200, and 205.232.

(d) How the amendment will assist in the effective administration of the statutes: The amendment is consistent with KRS 205.193, 205.200, 205.232, and other authorizing statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department for Community Based Services (DCBS) administers this program throughout Kentucky's 120 counties. As of April 2022, there were approximately 10,422 KTAP cases 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: There are no additional requirements in this amendment for KTAP or SSP participants.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs associated with this amendment.

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

Pursuant to the amendment in Section 1 of this administrative regulation and KRS 205.232, a KTAP participant may designate a protective payee to receive assistance.

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

(a) Initially: There are no costs associated with this amendment.

(b) On a continuing basis: There are no 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: The implementation and enforcement of this administrative regulation is funded by the federal TANF Block Grant.

(7) Provide an assessment of whether an 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 cabinet will implement and enforce this administrative regulation in subsequent years with the TANF Block Grant.

(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 is not applied because this administrative regulation will be applied in a like manner statewide.

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 601-619, 40 C.F.R. 260-265

(2) State compliance standards. KRS 194A.050(1), 205.220

(3) Minimum or uniform standards contained in the federal

mandate. Operating a state program consistent with the rules of the Temporary Assistance for Needy Families Block Grant (through KTAP). Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives; End the dependence of needy parents on government benefits by promoting job preparation, work, and marriage; Prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and Encourage the formation and maintenance of two-parent families.

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

(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 Department for Community Based Services will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 205.220, 42 U.S.C. 601-619, 40 C.F.R. 260-265

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with this 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 are not generated by this administrative regulation.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There are no cost savings associated with this amendment.

(c) How much will it cost the regulated entities for the first year? There are no costs to regulated entities associated with this amendment.

(d) How much will it cost the regulated entities for subsequent years? There are no costs to regulated entities associated with this amendment.

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

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 does not have a major economic impact.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Community Based Services**  
**Division of Family Support**  
**(Amendment)**

**921 KAR 2:060. Delegation of power for oaths and affirmations.**

RELATES TO: KRS 205.170(1), 42 U.S.C. 601-619

STATUTORY AUTHORITY: KRS 194A.050(1), [205.170(1),] 205.200[, 42 U.S.C. 601-619]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary [of the cabinet] to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health [welfare], personal dignity, integrity, and sufficiency of the citizens of the commonwealth [Commonwealth] and to operate the programs and fulfill the responsibilities of the cabinet. KRS 205.200 requires the Cabinet for Health and Family Services to administer [the] public assistance programs [program] in conformity with the public assistance titles [Public Assistance Titles] of the Social Security Act, its amendments, and other federal acts and regulations, including 42 U.S.C. 601 to 619, and to provide supplemental payments to persons who are aged, blind, or have a disability. This administrative regulation establishes the designation of certain employees by the secretary of the cabinet to administer oaths and affirmations[.] in conformity with KRS 205.170(1).

Section 1. Specific Worker Designation. The following classifications of employees shall be designated as duly authorized representatives of the Secretary of the Cabinet for Health and Family Services to administer an oath or affirmation to an applicant or recipient:

- (1) Family support specialist [H];
- (2) Case management specialist;
- (3) Public assistance program specialist [Program specialist];
- (4) Field services supervisor;
- (5) Service region administrator associate (SRAA); and
- (6) Service region administrator (SRA).

Section 2. Purpose. An oath or affirmation shall be administered by a designated representative to an applicant or recipient to:

(1) Obtain a sworn statement regarding a claim that a check issued through a cabinet program has been:

- (a) Lost;
- (b) Misplaced; or
- (c) Stolen;
- (2) Request a replacement check; or
- (3) View a check endorsement.

Section 3. Process. (1) A "PAFS-60, Affidavit" form[.] shall be used if:

(a) A check is reported lost or stolen to request a replacement check within twelve (12) months of intended receipt; or

(b) A check endorsement is viewed when a reported lost or stolen check is cashed.

(2) If the payee reports non-receipt, loss, or theft of a check, the payee shall come into the office to complete a PAFS-60 form within four (4) business [work] days of reporting non-receipt of the check in effort to place a stop payment on the check.

(3) If the original check has been cashed, a photocopy of the cashed check shall be forwarded to the local office.

(a) The payee shall view the endorsement; and

(b) If the signature is not that of the payee, the payee shall sign the PAFS-60 form stating the:

1. Signature on the photocopy is not the payee's signature;

and

2. Payee received no benefit from the cashing of the check.

Section 4. Incorporation by Reference. (1) The "PAFS-60, Affidavit", 09/22[12/28/15], is incorporated by reference.

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

MARTA MIRANDA-STRAUB, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 6, 2022

FILED WITH LRC: September 12, 2022 at 12:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 28, 2022, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by November 17, 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 November 30, 2022. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Laura Begin, Staff Assistant

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes criteria for the delegation of power for oaths and affirmations for Kentucky's public assistance programs in accordance with KRS 205.170(1).

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish employee designations for the administration of oaths and affirmations in accordance with KRS 205.170(1).

(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 designation of specific employees by the secretary of the cabinet to administer oaths and affirmations.

(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 designation of specific employees to administer oaths and affirmations in Kentucky's public assistance programs.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes the existing administrative regulation by updating Kentucky state government employee classification titles, makes minor revisions to incorporated material related to anti-discriminatory language, and makes technical

corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is also necessary to keep the administrative regulation from expiring pursuant to KRS 13A.3102 and 3104. The administrative regulation was reviewed for certification and determined to require updating.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by maintaining standards for the delegation of power for oaths and affirmations for Kentucky's public assistance programs.

(d) How the amendment will assist in the effective administration of the statutes: The amendment reflects updates in state government employee personnel titles.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department for Community Based Services (DCBS) administers this program throughout Kentucky's 120 counties. As of April 2022, there were approximately 10,422 KTAP cases 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: The amendment to this administrative regulation will require no new or additional action by regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Additional agency staff will be able to administer oaths in public assistance programs.

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

(a) Initially: There are no costs associated with this amendment.

(b) On a continuing basis: There are no 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: The implementation and enforcement of this administrative regulation is funded by the federal Temporary Assistance for Needy Families (TANF) Block Grant.

(7) Provide an assessment of whether an 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 amendment.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation will be applied in a like manner statewide.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 601-619

2. State compliance standards. KRS 194A.050(1), 205.170(1), 205.200

3. Minimum or uniform standards contained in the federal mandate. N/A

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? N/A

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 Department for Community Based Services will be impacted by this administrative regulation by administering public assistance programs.

(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), 205.170(1), 205.200, 42 U.S.C. 601-619.

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will not result in any new or additional costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not result in any new or additional costs.

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 are not generated by this administrative regulation, but it also does not require costs from regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There are no cost savings associated with this amendment.

(c) How much will it cost the regulated entities for the first year? There are no costs to regulated entities associated with this amendment.

(d) How much will it cost the regulated entities for subsequent years? There are no costs to regulated entities associated with this amendment.

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

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 does not have a major economic impact.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Community Based Services**  
**Division of Family Support**  
**(Amendment)**

**921 KAR 2:370. Technical requirements for Kentucky Works Program (KWP).**

RELATES TO: KRS 205.200(1)(7), ~~403.720(2)~~[205.2003], 45 C.F.R. 98.2, 260-265, 29 U.S.C. 651-678, 42 U.S.C. 601-619, 12101-12213

STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2), 205.200(7), 205.2003, 42 U.S.C. 601-619]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. ~~[The Cabinet for Health and Family Services has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program for the Kentucky Transitional Assistance Program, the block grant program funded pursuant to 42 U.S.C. 601 to 619. ]~~ KRS 205.200(2) and (7) require the secretary to promulgate administrative regulations prescribing the conditions of eligibility for public assistance, in conformity with the Social Security Act, 42 U.S.C. 601 to 619, and federal regulations. KRS 205.2003 requires that a work program for a recipient of Kentucky Transitional Assistance Program (KTAP)[(K-TAP)] be prescribed by administrative regulations. This administrative regulation sets forth the technical requirements of the Kentucky Works Program (KWP).

Section 1. Definitions. (1) "Affordable child care arrangements" means appropriate child care at a reasonable distance that is suitable and with a charge at or below the maximum provider payment rate pursuant to the Child Care and Development Fund (CCDF) plan.

(2) "Appropriate child care" means eligible child care as provided by an "eligible child care provider", pursuant to 45 C.F.R. Part 98.2.

(3) "Assessment" means the ongoing evaluation of an individual's strengths and needs relative to achieving self-sufficiency.

(4) "Assistance" is defined by 45 C.F.R. 260.31.

(5) "Barriers" means a limitation in an individual's ability to become employed and self-sufficient or to comply with KTAP[K-TAP] requirements.

(6) "Community service activities" means "community service programs", as defined by 45 C.F.R. 261.2(h).

(7) "Conciliation" means a process in which a participation problem in the Kentucky Works Program can be resolved.

(8) "Domestic violence and abuse" is defined by KRS 403.720(2) ["Employed" means a person performs a physical or mental activity in exchange for direct monetary compensation].

(9) "Family member" means an individual:

(a) Related by blood, marriage, or adoption to a child or a work-eligible individual, as defined by 45 C.F.R. 261.2(n), in the benefit group; or

(b) Who is a member of an unmarried couple and has a child in the benefit group in common with the work-eligible individual, as defined by 45 C.F.R. 261.2(n).

(10) "Full-time school attendance" means a workload of at least:

(a) The number of hours required by the individual program for participation in:

1. An adult basic education program;
2. A general educational development (GED) program; or
3. A literacy program;

(b) The number of hours required by the individual program for participation in a college or university; or

(c) The equivalent of paragraph (b) of this subsection in a college or university if other than a semester system is used; or

(d) The number of hours required by the individual high school or vocational school to fulfill the high school or vocational school's

definition of full time.

(11) "Job search and job readiness assistance" is defined by 45 C.F.R. 261.2(g).

(12) "Job skills training directly related to employment" is defined by 45 C.F.R. 261.2(j).

(13) "Kentucky Transitional Assistance Program" or "KTAP"[~~"K-TAP"~~] means the program established in 921 KAR 2:006[a money payment program for a child pursuant to 921 KAR 2:006, Section 4].

(14) "Kentucky Works Program" or "KWP" means a program designed to assist eligible low-income families with a child living in the home with achieving greater self-sufficiency by assisting program participants[that assists a recipient of K-TAP] in obtaining education, training, experience, and employment[~~necessary to leave public assistance~~].

(15) "On-the-job training" is defined by 45 C.F.R. 261.2(f).

(16) "Part-time enrollment" means enrollment with a postsecondary institution at a minimum of half of full-time enrollment as defined by subsection (10)(12)(b) or (e) of this section.

(17) ~~["Qualifying Parent" means a parent who meets prior labor market attachment in accordance with 921 KAR 2:006, Section 4.~~

(18) ~~"Reasonable distance" means the distance customarily available within a locality.~~

(19) ~~"Subsidized employment" is defined by 45 C.F.R. 261.2(c) and (d).~~

(18)(20) ~~"Unsubsidized employment" is defined by 45 C.F.R. 261.2(b).~~

(19)(21) ~~"Unsuitability of informal child care" means care not regulated pursuant to Kentucky law that does not meet the quality child care need as defined by the parent or the health and safety requirements applicable to unregulated child care in the commonwealth.~~

(22) ~~"Vocational education" means "vocational educational training" as defined by 45 C.F.R. 261.2(i).~~

(20)(23) ~~"Work-eligible individual" is defined by 45 C.F.R. 261.2(n).~~

(21)(24) ~~"Work Experience Program" or "WEP" means the definition of "work experience if sufficient private sector employment is not available" pursuant to 45 C.F.R. 261.2(e).~~

Section 2. Program Participation. (1) Unless the KTAP[K-TAP] recipient meets the exception criteria in Section 3 of this administrative regulation, the cabinet shall determine a work-eligible individual as follows:

(a)1. A one (1) parent household shall be required to participate in a specific activity pursuant to paragraph (c) of this subsection no less than the number of hours per week required in the activity, pursuant to subparagraph 2 of this paragraph.

2. The activity shall be required to have at least a minimum of thirty (30) hours per week, ten (10) hours of which may be satisfied through participation in an education or training activity pursuant to paragraph (c) 8, 9, and 11 of this subsection or in literacy or adult education.

(b) A two (2) parent household shall participate in a specific activity no less than the number of hours per week required in the activity, pursuant to this paragraph. The activity shall be required to meet the following requirements:

1. If the family participates in the Child Care Assistance Program pursuant to 922 KAR 2:160[receives federally funded child care assistance], the activity shall be required to have at least a minimum of fifty-five (55) hours combined from both parents, five (5) of which may be satisfied through participation in an education activity pursuant to paragraph (c)8, 9, and 11 of this subsection or in literacy or adult education.

2. If the family does not participate in the Child Care Assistance Program pursuant to 922 KAR 2:160[receive federally-funded child care], a two (2) parent household shall participate thirty-five (35) hours per week combined, five (5) of which may be satisfied through participation in an education activity pursuant to paragraph (c)8, 9, and 11 of this subsection or in literacy or adult education.

3. If an adult is needed to care for a child in the home with a severe disability[~~pursuant to 921 KAR 2:006~~], a two (2) parent



household shall participate pursuant to ~~subparagraph~~[paragraph] 2 of this paragraph.

4. A two (2) parent household eligible for ~~KTAP~~[K-TAP based on the deprivation of incapacity, pursuant to 921 KAR 2:006,] shall meet the number of hours of participation in a work activity listed in paragraph (a) of this subsection.

(c) In accordance with 45 C.F.R. 261.2, to be in compliance with the participation requirement in KWP, a countable activity may include:

1. Unsubsidized employment;
2. Subsidized employment;
3. Work experience training;
4. On-the-job training;
5. Job search and job readiness assistance;
6. Community service activities;
7. Full-time enrollment, as defined by the educational institution or program, in post-secondary or vocational education not to exceed twelve (12) cumulative months;
8. Full or part-time enrollment, as defined by the educational institution or program, in postsecondary or vocational education at any time if combined with an activity pursuant to subparagraph 1 through 4 and 6 of this paragraph;
9. Attendance at secondary school or equivalent if the recipient:
  - a. Has not completed secondary school or equivalent; or
  - b. Couples the attendance with work or work activity in the amount of hours per week pursuant to paragraphs (a) and (b) of this subsection;
10. Provision of child care services to an individual participating in community service activities;
11. Job skills training directly related to employment; and
12. Based on the findings of the assessment, an allowable activity that includes:

- a. Domestic violence and abuse counseling;
  - b. Life skills training;
  - c. A substance abuse program;
  - d. Mental health counseling;
  - e. Vocational rehabilitation;
  - f. Literacy;
  - g. Adult education; or
  - h. Another preparation or service:
    - (i) To address an individual's barriers; and
    - (ii) Approved in advance by the cabinet.
- (2) Excused absences shall:
- (a) Include:
1. Scheduled hours missed due to holidays; and
  2. A maximum of ten (10) additional days or eighty (80) hours of excused absences in any twelve (12) month period with no more than two (2) days or sixteen (16) hours occurring in a month; and
- (b) Count as actual hours of participation.
- (3) To verify the actual number of hours of participation in approved activities, the ~~KTAP~~[K-TAP] recipient shall provide the following:
- (a) A completed "KW-33, Verification of Kentucky Works Program Participation"; or
- (b) A monthly calendar sheet or log that requires the signature of the person supervising the work-eligible individual.

Section 3. Exceptions to Program Participation. (1) A work-eligible individual shall be considered to be engaged in work for a month in a fiscal year if the individual:

- (a) Is a head of household;
  - (b) Has not obtained a high school diploma or a GED;
  - (c) Has not attained twenty (20) years of age; and
  - (d) 1. Maintains regular attendance and satisfactory progress at a secondary school or the equivalent during the month; or
  2. Participates in education that is directly related to employment for at least twenty (20) hours a week while maintaining regular attendance and satisfactory progress.
- (2)(a) A work-eligible individual shall not be required to comply with a program participation requirement for up to twelve (12) months if the individual is:
1. A single custodial parent; and
  2. Caring for a child who has not attained twelve (12) months

of age.

(b) The twelve (12) months of exemption from a work participation requirement shall be limited to a total of twelve (12) months in a lifetime for the adult and may be:

1. Consecutive; or
2. Cumulative.

(3)(a) For a work-eligible individual whose compliance with program participation would make it difficult to escape domestic violence and abuse or unfairly penalize the individual who is currently experiencing or is a survivor of~~or has been victimized by~~ domestic violence and abuse, compliance shall not be mandated.

(b) If a ~~KTAP~~[K-TAP] applicant or work-eligible individual is identified as a survivor~~[victim]~~ of domestic violence and abuse or currently experiencing~~[with a history of]~~ domestic violence and abuse, an appropriate services plan shall be required for the individual pursuant to 921 KAR 2:006, Section 19~~[25]~~.

(4) A work-eligible individual shall be considered to be engaged in work for a month if the individual is:

(a) A single custodial parent or caretaker relative in the family with a child who has not attained six (6) years in age; and

(b) Engaged in work for an average of at least twenty (20) hours per week during the month pursuant to Section 2(1)(c) 1, 2, 3, 4, 5, 6, or 7 of this administrative regulation.

(5) In accordance with 45 C.F.R. 261.2(n)(2)(i), the cabinet shall exclude from program participation a parent providing care to a disabled family member as verified by the completion of the "PA-4, Statement of Required Caretaker Services".

(6) In accordance with 45 C.F.R. 261.2(n)(2), the cabinet shall exclude from program participation a parent who is a recipient of Social Security Disability Insurance (SSDI) benefits.

(7)(a) If an individual with an ADA disability cannot participate in a countable work activity as specified in Section 2 of this administrative regulation.

(b) A reasonable accommodation or program modification may include:

1. Excused participation from an activity;
2. Participation for a reduced number of hours;
3. Participation in an activity for a longer period of time than is countable; or
4. Participation in an activity that is not countable in accordance with Section 2(1)(c)12 of this administrative regulation.

(8) An applicant of ~~KTAP~~[K-TAP] shall be informed in writing of the availability of the exceptions to KWP participation pursuant to this section.

Section 4. Program Participation Requirements. (1) Assessment.

(a) The cabinet or its designee shall make an assessment of the work-eligible individual's employability on the "KW-200, Kentucky Works Program Assessment"~~[Form]~~.

(b) The cabinet shall request another agency to assist in the assessment process if the need for a diagnostic assessment or an additional professional skill set is indicated.

(c) The assessment shall include consideration of:

1. Basic skills;
2. Occupational skills;
3. Barriers and other relevant factors;
4. An ADA disability; and
5. A reasonable accommodation or program modification needed for an individual with an ADA disability.

(2) The self-sufficiency plan. Based on the findings of the assessment, the cabinet or its designee and work-eligible individual shall jointly develop a self-sufficiency plan by completing the "KW-202, ~~KTAP~~[K-TAP] Transitional Assistance Agreement". This plan shall contain:

- (a) An employment goal for the individual;
- (b) A service to be provided by the cabinet including child care;
- (c) An activity to be undertaken by the individual to achieve the employment goal;
- (d) A reasonable accommodation or program modification needed due to an ADA disability; and
- (e) Other needs of the family.

(3) In accordance with KRS 205.200(7)(a), an adult applicant or recipient of the ~~KTAP~~[K-TAP] benefit group shall register for

work except for a member who is:

- (a) Under age eighteen (18);
- (b) Age sixty (60) or over;
- (c) Age eighteen (18) or nineteen (19) years old in full-time school attendance pursuant to 921 KAR 2:006, Section 3;
- (d) Receiving benefits based on 100 percent disability;
- (e) An individual who has received benefits based on 100 percent disability within the past twelve (12) months but lost the benefits due to income or resources and not an improvement in the disability;[-or]
- (f) Employed thirty (30) hours or more per week at minimum wage or more;\_or
- (g) Part of a federal Office of Refugee Resettlement (ORR) eligible population whose immigration status excludes or prohibits work registration in accordance with 45 C.F.R. 261.2(n)(1)(ii).

Section 5. Conciliation. (1) Conciliation shall be conducted:

- (a) At the request of a work-eligible individual or a KWP participant;
  - (b) At the request of a service provider; or
  - (c) If a situation is identified that could result in a penalty pursuant to Section 7 of this administrative regulation.
- (2) The conciliation shall be conducted by the cabinet or its designee.
- (3) During conciliation, the cabinet or its designee shall determine if an additional service is needed to assist with KWP participation.
- (4)(a) During conciliation, participation shall be monitored for up to fifteen (15) days following the issuance of form "KW-204, KWP Conciliation"[-Notice].
- (b) The fifteen (15) day period may be extended for an additional fifteen (15) days, if necessary, to determine if participation is in compliance with the terms of the conciliation.
- (5) At the conclusion of the conciliation period, the participant shall be notified in writing of an adverse action in accordance with 921 KAR 2:046.

Section 6. Excused from Penalties. (1) A work-eligible individual shall be excused from a penalty for failure to comply with KWP, pursuant to Section 7 of this administrative regulation, if one (1) of the following good cause criteria is met:

- (a) The individual is a single custodial parent who has a demonstrated inability to obtain needed child care for a child under six (6) years of age. A demonstrated inability to obtain needed child care for a child under six (6) years of age shall be met if the single custodial parent cannot:
  - ~~1. Cannot locate appropriate or affordable child care;~~
  - ~~2. Cannot locate child care at a reasonable distance from home;~~
  - ~~3. Determines the unsuitability of informal child care; or~~
  - ~~4. Cannot locate affordable child care arrangements;]~~
- (b) Dependent care is not available for an incapacitated individual living in the same household as a dependent child;
- (c) Child care is terminated through no fault of the individual;
- (d) Child care does not meet the needs of the child, for example, a child with a disability;
- (e) 1. The individual is unable to engage in employment or training for a mental or physical reason as verified by the cabinet; and
- 2. No reasonable accommodation or program modification exists;
- (f) The individual is temporarily incarcerated or institutionalized for thirty (30) days or less;
- (g) The cabinet determines there is discrimination by an employer and a formal complaint has been filed based on:
  - 1. Age;
  - 2. Race;
  - 3. Sex or gender identity;
  - 4. Color;
  - 5. Sexual orientation[Disability];
  - 6. Religion[Religious belief];
  - 7. National origin or ancestry[-or]
  - 8. Disability;
  - 9. Political belief; or

10. Reprisal or retaliation for prior civil rights activity;

(h) Work demand or condition renders continued employment unreasonable including:

- 1. Consistently not being paid on schedule; or
  - 2. The presence of a risk to the individual's health or safety;
  - (i) Wage rate is decreased subsequent to acceptance of employment;
  - (j) The individual accepts a better job that, because of a circumstance beyond the control of the individual, does not materialize; or
  - (k) The work activity site is so far removed from the home that commuting time would exceed three (3) hours per day.
- (2) The duration of good cause criteria may vary according to the individual's circumstance.

Section 7. Penalties. (1) If a work-eligible individual fails to comply with a requirement of the KWP, the recipient shall be subject to a KWP and KTAP[K-TAP] penalty. Failure to comply shall be found if the work-eligible individual:

- (a) Fails without good cause, pursuant to Section 6 of this administrative regulation, to participate in a required activity, including:
    - 1. An assessment interview;
    - 2. An assessment; or
    - 3. Self-sufficiency plan development including completion of KW-202;
  - (b) Fails without good cause, pursuant to Section 6 of this administrative regulation, to participate in a program activity in accordance with form KW-202;
  - (c) Refuses without good cause, pursuant to Section 6 of this administrative regulation, to accept employment;
  - (d) Terminates employment or reduces earnings without good cause, pursuant to Section 6 of this administrative regulation; or
  - (e) Fails to register for work unless an exception in Section 4(3) of this administrative regulation applies.
- (2)(a) Except for a requirement listed in paragraph (b) of this subsection:

1. A work-eligible individual who has failed to comply with a KWP requirement without good cause, pursuant to Section 6 of this administrative regulation, shall be penalized by reducing the amount of the assistance otherwise payable to the benefit group on a pro rata basis; or

2. Assistance otherwise payable to a benefit group consisting of a two (2) parent household shall be discontinued if neither the work-eligible individual who is a qualifying parent nor the other parent complies with a KWP requirement without good cause, pursuant to

Section 6 of this administrative regulation.

(b) Assistance to the benefit group shall be denied if the work-eligible individual, fails, without good cause pursuant to Section 6 of this administrative regulation, to:

- 1. Keep an appointment for an assessment interview; or
  - 2. Pursuant to Section 4 of this administrative regulation:
    - a. Complete an assessment; or
    - b. Register for work.
- (c) The penalties in subsection (2)(a) of this section shall continue to be applied until the work-eligible individual complies with a program requirement.

(3) The penalties in subsection (2) of this section shall not be applied until after a conciliation procedure is conducted pursuant to Section 5 of this administrative regulation.

Section 8. Hearings and Appeals. An applicant or recipient of benefits pursuant to a program described herein who is dissatisfied with an action or inaction on the part of the cabinet shall have the right to a hearing pursuant to 921 KAR 2:055.

Section 9. Work Experience Program Training Site Agreement. (1) A cost incurred by a training site agency because of participation in a WEP shall not be reimbursed.

(2) A WEP participant shall not be removed from training without prior notice to the Department for Community Based Services.

(3) A WEP participant shall not infringe upon the promotional opportunity of a currently employed individual.

(4) An individual shall not be subjected to discrimination, or denied training or employment or benefits, in the administration of, or in connection with, the training program because of:

- (a) Race;
- (b) Color;
- (c) Religion;
- (d) Sex or gender identity;
- (e) Sexual orientation[National origin];
- (f) Age;
- (g) Disability;[~~or~~]
- (h) National origin or ancestry;
- (i) Political belief or affiliation; or
- (j) Reprisal or retaliation for prior civil rights activity.

(5) Prior to placement in a WEP activity, a WEP participant shall sign form "KW-241[KWET-244], WEP Training Site Agreement".

(6) A training site agency shall:

(a) Complete surveying or reporting relating to the operation of the training site agreement upon the request of the cabinet;

(b) Not displace a currently employed worker by a WEP participant, including a partial displacement including a reduction of the:

- 1. Hours of non-overtime work;
  - 2. Wages; or
  - 3. Employment benefits;
- (c) Comply with 42 U.S.C. 12101 to 12213;

(d) Report a personnel problem to the departmental representative designated by the cabinet;

(e) Maintain accurate time and attendance records daily for a WEP participant;

(f) Verify time and attendance records for a WEP participant pursuant to Section 2(3) of this administrative regulation to ensure the WEP participant's compliance with subsection (7) of this section;

(g) Grant access for the Department for Community Based Services to the training site during working hours to counsel a participant and to monitor the site;

(h) Immediately report an injury to the designated representative;

(i) Conduct an investigation and submit a report upon the request of the Department for Community Based Services;

(j) Not encourage or require a WEP participant to take part in partisan political activity, or involve a WEP participant in partisan political activity;

(k) Maintain the confidentiality of information provided by or about a WEP participant who seeks or receives a service pursuant to form KW-241[KWET-244], except as authorized by law or in writing by a WEP participant;

(l) Hold the cabinet harmless from a loss, claim, expense, action, cause of action, cost, damage, and obligation arising from a negligent act or omission of the training site agency, its agent, employee, licensee, invitee, or WEP participant that results in injury to a person, or damage or loss relative to a person, corporation, partnership, or other entity;

(m) Provide:

- 1. Sufficient training to ensure development of appropriate skills;
- 2. New task after mastery of a skill; and
- 3. Adequate participation instruction and supervision at all times;

(n) Provide the participant a safe training place;

(o) Assure a participant, engaged in an activity not covered pursuant to 29 U.S.C. 651 to 678, is not required or permitted to receive training or a service in a building or surrounding, or under a training condition that is unsanitary, hazardous, or dangerous to the health and safety of the participant;

(p) Provide adequate material to complete a training activity in a safe environment; and

(q) Sign form KW-241[KWET-244] with the cabinet and the participant containing a statement of:

1. The conditions established by subsections (1) through (10) of this section; and

2. The period covered by the agreement, including the required weekly number of hours of participation.

(7) The WEP participant shall submit verification pursuant to Section 2(3) of this administrative regulation completed monthly in accordance with subsection (6)(e) and (f) of this section.

(8) If an amendment is made to the agreement, a new form KW-241[KWET-244] shall be issued.

(9) A WEP participant or WEP provider shall be notified in writing of discontinuance of a WEP placement on form KW-241[KWET-244].

(10) A WEP participant shall have the right to request an administrative hearing, in accordance with Section 8 of this administrative regulation, relating to a grievance or complaint.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "KW-33, Verification of Kentucky Works Program Participation", 09/22[12/15];

(b) "KW-200, Kentucky Works Program Assessment[~~Form~~]", 09/22[2/09];

(c) "KW-202, KTAP[K-TAP] Transitional Assistance Agreement", 09/22[12/15];

(d) "KW-204, KWP Conciliation[~~Notice~~]", 09/22[12/15];

(e) "KW-241[KWET-244], WEP Training Site Agreement", 09/22[4/11]; and

(f) "PA-4, Statement of Required Caretaker Services", 09/22[12/15].

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

MARTA MIRANDA-STRAUB, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 6, 2022

FILED WITH LRC: September 12, 2022 at 12:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 28, 2022, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by November 17, 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 November 30, 2022. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Laura Begin, Staff Assistant

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes criteria for the Kentucky Works Program (KWP). KWP is the work program for participants in the Kentucky Transitional Assistance Program (KTAP).

(b) The necessity of this administrative regulation: KRS 205.2003 requires that a work program be prescribed for a recipient of KTAP. This administrative regulation is necessary to

establish criteria for participating in KWP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 194A.050, which authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to qualify for federal funds and to cooperate with other state and federal agencies. The cabinet is required to implement the federal Temporary Assistance for Needy Families (TANF) program through KTAP pursuant to 45 C.F.R. 260-265.

(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 technical eligibility requirements for participation in KWP, including weekly participation requirements, allowable activities, good cause reasons for failure to participate, exemption criteria from program participation, and penalties for failure to participate without good cause.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates definitions and provisions related to discrimination consistent with state and federal law and updates incorporated material to reflect updates in transportation needs and anti-discrimination provisions, clarify instructions, make grammatical corrections, update language, and include agency contact information. Material incorporated by reference is being amended to reflect changes in transportation and other support services provided to KWP participants, to make grammatical corrections, and to provide agency contact information on the forms.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to keep the administrative regulation from expiring pursuant to KRS 13A.3102 and 3104. The administrative regulation was reviewed for certification and determined to require updating.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 205.2003 requires that a work program be prescribed for a recipient of KTAP. The amendment still does this, but updates language and incorporated material.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is necessary to remain in federal and state compliance for Kentucky to continue operation of KWP and KTAP.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department for Community Based Services (DCBS) administers this program. As of April 2022, there were approximately 10,422 KTAP cases throughout 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: There are no additional requirements for KWP participants in this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Definitions and language used in this administrative regulation is being updated for consistent with other administrative regulations and state and federal law.

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

(a) Initially: There are no costs associated.

(b) On a continuing basis: There are no costs associated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this administrative regulation is funded by the TANF Block Grant.

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

no increase in fees or funding associated with 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 or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation will be applied in a like manner statewide.

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 45 C.F.R. 260-265.

(2) State compliance standards. KRS 194A.050(1), 205.200(2), 205.200(7), 205.2003

(3) Minimum or uniform standards contained in the federal mandate. This administrative regulation establishes the work program for recipients of Kentucky's TANF program, KTAP. Operating a state program consistent with the rules of the Temporary Assistance for Needy Families Block Grant. Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives; End the dependence of needy parents on government benefits by promoting job preparation, work, and marriage; Prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and Encourage the formation and maintenance of two-parent families.

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

(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 Department for Community Based Services will be impacted by this administrative regulation by administering the program.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 45 C.F.R. 260-265, KRS 194A.050(1), 205.200(2), 205.200(7), 205.2003

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

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

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

(c) How much will it cost to administer this program for the first year? The cabinet will utilize the administrative funds available under the federal TANF Block Grant to administer this program.

(d) How much will it cost to administer this program for subsequent years? The cabinet will utilize the administrative funds available under the federal TANF Block Grant to administer this program.

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 does not generate cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There are no cost savings associated with this amendment.

(c) How much will it cost the regulated entities for the first year? There are no costs to regulated entities associated with this amendment. Participating in this program is required for KTAP recipients.

(d) How much will it cost the regulated entities for subsequent years? There are no costs to regulated entities associated with this amendment.

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

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 does not have a major economic impact.

## 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](#).

### STATE BOARD OF ELECTIONS (New Administrative Regulation)

#### 31 KAR 2:030. E-poll book product certification.

RELATES TO: KRS 117.001(8), 117.379(2)(c)  
STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.379(2)(c)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 117.379(2)(c) requires the State Board of Elections to promulgate administrative regulations that establish certification requirements for the approval and certification of e-poll book products used in the Commonwealth. This administrative regulation provides for those measures.

Section 1. Beginning September 1, 2022, all e-poll book products, as defined by KRS 117.001(8), sought to be used in the Commonwealth shall be approved and certified if the examiners' report outlined in KRS 117.379(2)(c), and the State Board of Elections find that the e-poll book product meets the certification requirements outlined in Form SBE 2030, "Certification Procedures For E-Poll Book Products," 09/2022.

Section 2. Incorporated by Reference. (1) "Certification Procedures For E-Poll Book Products," Form SBE 2030, 09/2022.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

KAREN SELLERS, Executive Director

APPROVED BY AGENCY: September 1, 2022

FILED WITH LRC: September 1, 2022 at 9:45 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this new administrative regulation shall be held on November 30, 2022, at 10:00 a.m. ET, at the Office of the State Board of Elections. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 30, 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: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Taylor Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes certification requirements for the approval and certification of e-poll book products used in the Commonwealth.

(b) The necessity of this administrative regulation: This administrative regulation is necessary given the mandate of KRS 117.379(2)(c).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This administrative regulation fulfills the mandate of KRS 117.379(2)(c).

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect e-poll book vendors and the State Board of Elections.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. To comply with this administrative regulation, e-poll book vendors will need to follow the certification requirements outlined, while the State Board of Elections will need to make sure the requirements are followed by the vendors.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The State Board of Elections estimates that the implementation of this administrative regulation will have minimal costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new administrative regulation will benefit all in ensuring that all e-poll book products used in the Commonwealth are reviewed and certified.

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

(a) Initially: The cost of the implementation of this administrative regulation for the State Board of Elections will be minimal as it will require only the creation of the new Forms incorporated by reference.

(b) On a continuing basis: The only continuing cost will be the price associated with printing any copies of the SBE Forms that are necessary.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds from the State Board of Elections' administrative budget will be used in the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Implementation of this administrative regulation can be achieved without an increase in fees or funding by the General Assembly.

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

(9) TIERING: Is tiering applied? Tiering is not used in this administrative regulation, as a desired result of the promulgation of this administrative regulation is uniform procedures for the approval and certification of e-poll books used in the Commonwealth.

## 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 State Board of Elections 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 117.379(2)(c) requires and authorizes the actions taken by this administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

(d) How much will it cost to administer this program for subsequent years? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

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

Revenues (+/-): It is not expected or intended that this administrative regulation will generate any revenue.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

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? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(c) How much will it cost the regulated entities for the first year? The State Board of Elections estimates that the implementation of this administrative regulation will result in e-poll book vendors incurring nominal costs in-line with the cost of certification of their products in other jurisdictions.

(d) How much will it cost the regulated entities for subsequent years? The State Board of Elections estimates that the implementation of this administrative regulation will result in e-poll book vendors incurring nominal costs in-line with the cost of certification of their products in other jurisdictions.

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

Cost Savings (+/-): It is not expected that this administrative regulation will result in any cost savings.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

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)]. The State Board of Elections does not expect that this administrative regulation will result in a major economic impact as it is not expected to have an overall negative or adverse economic impact of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate.

## FINANCE AND ADMINISTRATION CABINET Kentucky Retirement Systems (New Administrative Regulation)

### 105 KAR 1:451. Quasi-governmental employer reports on independent contractors and leased employees.

RELATES TO: KRS 61.5991, 61.510, 61.543, 61.552, 61.645, 61.675, 61.685

STATUTORY AUTHORITY: KRS 61.5991(1)(c), 61.645(9)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(e) requires the Board of Trustees of the Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 61.510 to 61.705 and 16.505 to 16.652, and to conform to federal statutes and regulations. KRS 61.5991 requires certain employers that participate in the Kentucky Employees Retirement System to report information to the Kentucky Public Pensions Authority on some persons providing services for the participating employer as an independent contractor, a leased employee, or via any other similar employment arrangement.

#### Section 1. Definitions.

(1) Unless otherwise defined in this section, the definitions contained in KRS 61.510 and the definition of "non-core services independent contractor" in KRS 61.5991 shall apply to this administrative regulation.

(2) "Complete" means all required sections of a form are filled out, the form has been fully executed by an agency head, appointing authority, or authorized designee (such as the reporting official), and all supporting documentation required by the form is included with the form.

(3) "Core services independent contractor" means a person, either personally or through a company or other legal entity, who provides services for a quasi-governmental employer as an independent contractor, other than as a non-core services independent contractor.

(4) "Core services leased employee" means a person who provides services for a quasi-governmental employer as a leased employee through a staffing company, other than as a non-core services independent contractor.

(5) "Direct employment" means employees reported by the quasi-governmental employer in accordance with KRS 61.675 and 105 KAR 1:140.

(6) "File" means a form has been received at the retirement office by mail, fax, secure email, or in-person delivery or via Employer Self Service on the Web site maintained by the agency (if available).

(7) "KPPA" means the administrative staff of the Kentucky Public Pensions Authority.

(8) "Other employment arrangement" means any written agreement between a quasi-governmental employer and a third party (including, but not limited to, a person, company, or other legal entity) for one (1) or more persons to provide services for the quasi-governmental employer in exchange for the third party receiving monetary compensation, remuneration, or profit. "Other employment arrangement" does not include direct employment, any written agreement for one (1) or more persons to provide services for a quasi-governmental employer as a non-core services independent contractor, or any written agreement for one (1) or more persons to provide services to a quasi-governmental employer if the persons would not be in a regular full-time position as defined in KRS 61.510(21) if the persons were directly

employed by the quasi-governmental employer.

(9) "Prior fiscal year" means the fiscal year beginning July 1 that is immediately prior to the fiscal year in which the KPPA provides the report to the state budget director's office and the Legislative Research Commission required by KRS 61.5991(3).

(10) "Quasi-governmental employer" means an employer participating in the Kentucky Employees Retirement System that is a local or district health department governed by KRS Chapter 212, state-supported university or community college, mental health/mental retardation board, domestic violence shelter, rape crisis center, child advocacy center, or any other employer that is eligible to voluntarily cease participation in the Kentucky Employees Retirement System as provided by KRS 61.522. For the purpose of this administrative regulation, "quasi-governmental employer" does not include county attorneys, the Council on State Governments (CSG), the Kentucky Educational Television (KET) Foundation, Association of Commonwealth's Attorneys, the Kentucky High School Athletic Association (KHSAA), the Municipal Power Association of Kentucky, the Kentucky Office of Bar Admissions, the Nursing Home Ombudsman, the Kentucky Association of Regional Programs (KARP), and the Kentucky Association of Sexual Assault Programs.

#### Section 2. Required Form for Annual Reporting.

(1)(a) For the fiscal year beginning July 1, 2021, quasi-governmental employers shall report all persons providing services as core services independent contractors, core services leased employees, or through any other employment arrangement by completing the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, and filing the Form 6756 at the retirement office on or before May 2, 2022.

(b) Effective with the fiscal year beginning July 1, 2022, and for each fiscal year thereafter, quasi-governmental employers shall report all persons providing services as core services independent contractors, core services leased employees, or through any other employment arrangement by completing the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, and filing the Form 6756 at the retirement office. For each fiscal year beginning on or after July 1, 2022, the Form 6756 shall be filed at the retirement office on or before April 15 of the fiscal year in which the Form 6756 is required.

(c) If a quasi-governmental employer contracts for any additional persons to provide services as core services independent contractors, core services leased employees, or through any other employment arrangement after the submission of a completed Form 6756, Annual Employer Certification of Non-Contributing Service Providers, in accordance with paragraph (a) or paragraph (b) of this subsection, but prior to the end of the fiscal year, the quasi-governmental employer shall file at the retirement office a completed supplemental Form 6756 reflecting only those persons not previously reported on the initial Form 6756. The supplemental Form 6756 shall be filed at the retirement office on or before June 30 of the fiscal year in which the Form 6756 is required.

(2)(a) Persons exempted under Sections 5 and 6 shall not be required to be listed on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers.

(b) Persons providing services as core services independent contractors, core services leased employees, or through any other employment arrangement who would not qualify as an employee in a regular full-time position pursuant to KRS 61.510(21) if directly employed by the quasi-governmental employer shall not be listed on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers.

(c) Persons providing services as core services independent contractors, core services leased employees, or through any other employment arrangement who would be in a position reported to another state-administered retirement system if directly employed by the quasi-governmental employer shall not be listed on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers.

(d)1. Quasi-governmental employers may choose to report persons providing services as a non-core services independent contractor on an initial or supplemental Form 6756, Annual

Employer Certification of Non-Contributing Service Providers.

2. All persons providing services to a quasi-governmental employer as a non-core services independent contractor who are included on an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, shall be treated in the same manner as all other persons listed on the Form 6756, including determinations by the KPPA under Section 3 of this administrative regulation.

(3)(a) For the fiscal year beginning July 1, 2021, quasi-governmental employers that do not file at the retirement office a completed Form 6756, Annual Employer Certification of Non-Contributing Service Providers, on or before May 2, 2022 shall be reported as noncompliant to the state budget director's office and the Legislative Research Commission in accordance with KRS 61.5991(2)(c) and 61.5991(3)(d).

(b) For each fiscal year beginning on or after July 1, 2022, quasi-governmental employers that do not file at the retirement office a completed Form 6756, Annual Employer Certification of Non-Contributing Service Providers, as required by Section 2(1)(b) of this administrative regulation shall be reported as noncompliant to the state budget director's office and the Legislative Research Commission in accordance with KRS 61.5991(2)(c) and 61.5991(3)(d).

(4) If a quasi-governmental employer files at the retirement office an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, without the documentation required by the Form 6756, the Form 6756 shall not be complete and the quasi-governmental employer shall be noncompliant in accordance with KRS 61.5991(2)(c) and 61.5991(3)(d) unless a completed Form 6756 is later filed at the retirement office by the appropriate deadline set forth in subsections (1), (2), and (5) of this Section.

(5)(a) After receiving an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, the KPPA may notify the quasi-governmental employer that additional information is required.

(b) If additional information is required by the KPPA, the KPPA shall notify the quasi-governmental employer in writing to the attention of the agency head, appointing authority, or authorized designee, such as the reporting official, and shall include the following in its notification:

1. A detailed description of the additional information required, and

2. A deadline by which the additional information required must be filed at the retirement office, which shall not be less than fourteen (14) calendar days, but may be longer than fourteen (14) calendar days.

(c) An initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, shall not be considered complete until all additional information requested by the KPPA is on file at the retirement office.

(d) If a quasi-governmental employer fails to provide the additional information to the KPPA by the deadline listed in the notification described in paragraph (b) of this subsection or by the deadline agreed upon by the KPPA and the quasi-governmental employer, then the quasi-governmental employer shall be reported as noncompliant to the state budget director's office and the Legislative Research Commission in accordance with KRS 61.5991(2)(c) and 61.5991(3)(d).

(6) During an audit of the quasi-governmental employer conducted in accordance with KRS 61.675, 61.685, and 61.5991(2)(a)2., if the KPPA discovers that a quasi-governmental employer has failed to list all persons on a Form 6756, Annual Employer Certification of Non-Contributing Service Providers, as required by this administrative regulation, then the quasi-governmental employer shall be reported as noncompliant to the state budget director's office and the Legislative Research Commission in accordance with KRS 61.5991(2)(c) and 61.5991(3)(d).

#### Section 3. Determination of Employee or Independent Contractor.

(1) The KPPA shall have the authority to determine which persons listed on initial and supplemental Form 6756s, Annual



Employer Certification of Non-Contributing Service Providers, should be reported as employees in regular full-time positions in accordance with KRS 61.510(5) and 61.510(21) and which persons listed on the initial and supplemental Form 6756s, Annual Employer Certification of Non-Contributing Service Providers, are independent contractors.

(2) The KPPA shall apply common law factors used by the Internal Revenue Service (IRS), in accordance with IRS Publication 1779, to determine whether a person listed on the initial and supplemental Form 6756s, Annual Employer Certification of Non-Contributing Service Providers, is an employee of the quasi-governmental employer pursuant to KRS 61.510(5) or an independent contractor of the quasi-governmental employer.

(3)(a) If the KPPA determines that a person listed on an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, is an employee of the quasi-governmental employer in a regular full-time position pursuant to KRS 61.510(5) and 61.510(21), then the quasi-governmental employer shall remit all reports, records, contributions, and reimbursements for that person as an employee in a regular full-time position in accordance with KRS 61.675 and 105 KAR 1:140 effective the calendar month after the KPPA has notified the quasi-governmental employer of its determination in accordance with Section 4 of this administrative regulation.

(b)1. If the KPPA determines that a person listed on an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, is an employee of the quasi-governmental employer in a regular full-time position pursuant to KRS 61.510(5) and 61.510(21), then the quasi-governmental employer shall be required to complete and file at the retirement office a Form 4225, Verification of Past Employment, for that person for all periods during which the person was providing services to the quasi-governmental employer.

2. If the KPPA determines that a person listed on an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, is an employee of the quasi-governmental employer in a regular full-time position pursuant to KRS 61.510(5) and 61.510(21), then the quasi-governmental employer also shall be required to submit all relevant contracts and other documentation demonstrating the relationship between the quasi-governmental employer and the person for all periods during which the person was providing services to the quasi-governmental employer.

(c)1. After reviewing the information from the quasi-governmental employer required by paragraph (b) of this subsection, if the KPPA determines that the person was an employee in a regular full-time position pursuant to KRS 61.510(5) and 61.510(21) for previous periods that were not reported by the quasi-governmental employer in accordance with KRS 61.675, KRS 61.543, and 105 KAR 1:140, then the person shall be eligible to purchase omitted service in accordance with KRS 61.552(2) for the periods of their previous employment by the quasi-governmental employer in a regular full-time position.

2. After reviewing the information from the quasi-governmental employer required by paragraph (b) of this subsection, if the KPPA determines that the person was an employee in a regular full-time position pursuant to KRS 61.510(5) and 61.510(21) for previous periods that were not reported by the quasi-governmental employer in accordance with KRS 61.675, KRS 61.543, and 105 KAR 1:140, then the quasi-governmental employer shall be responsible for payment of delinquent omitted employer contributions in accordance with KRS 61.552(2) and 61.675(3)(b) for all periods of the person's previous employment by the quasi-governmental employer in a regular full-time position.

#### Section 4. Notification to Employers of Determination of Employment Relationship.

(1) Effective with the fiscal year beginning July 1, 2021, and for each fiscal year thereafter, quasi-governmental employers shall be notified by the KPPA of the determination of which persons should be reported as employees in regular full-time positions in accordance with KRS 61.510(5) and 61.510(21) no later than the submission of the report to the state budget director's office and the Legislative Research Commission required by KRS 61.5991(3).

(2)(a) The KPPA shall notify the quasi-governmental employer of the determination of which persons listed on an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, should be reported as employees in regular full-time positions in accordance with KRS 61.510(5) and 61.510(21) in one (1) notification letter.

(b) The notification shall be sent to agency head, appointing authority, or authorized designee, such as the reporting official.

(c) The notification shall include:

1. The name of each person who should be reported as an employee in regular full-time position in accordance with KRS 61.675 and 105 KAR 1:140;

2. A description of the contract or other documents pursuant to which each person who should be reported as an employee in a regular full-time position are providing or have provided services to the quasi-governmental employer; and

3. A statement that all other persons listed on the initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, should not be reported as employees in regular full-time positions.

#### Section 5. Contracts for professional services that have not historically been provided by employees.

(1) A quasi-governmental employer shall not be required to report a person on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if:

(a) The person is providing professional services as a core services independent contractor, core services leased employee, or through any other employment arrangement that have not been performed by direct employees of the quasi-governmental employer since January 1, 2000; and

(b) The professional services have been performed or are being performed for the quasi-governmental employer under a contract filed at the retirement office and determined by the KPPA or the Kentucky Retirement Systems to represent services provided by an independent contractor.

(2) Quasi-governmental employers may choose to report a person on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, even if the person is providing professional services under a contract that have not historically been provided by employees.

#### Section 6. Original contracts entered prior to January 1, 2021.

(1) A quasi-governmental employer shall not be required to report a person on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if the person is providing services to the quasi-governmental employer as a core services independent contractor, core services leased employee, or through any other employment arrangement under an original contract with the person or a company entered into prior to January 1, 2021, unless one of the exceptions in subsections (2), (3), or (4) of this Section applies.

(2) A quasi-governmental employer shall be required to report a person on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if the person is providing services to the quasi-governmental employer as a core services independent contractor, core services leased employee, or through any other employment arrangement under an original contract with the person or a company entered into prior to January 1, 2021 if the term of the original contract has expired and the contract has been renewed or continued.

(3) A quasi-governmental employer shall be required to report a person on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if the person is providing services to the quasi-governmental employer as a core services independent contractor, core services leased employee, or through any other employment arrangement under an original contract with the person or a company entered into prior to January 1, 2021 if the contract has been modified to encompass different services.

(4) A quasi-governmental employer shall be required to report a person on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if the person is providing services to the quasi-governmental employer as a core services independent contractor, core services leased employee, or through

any other employment arrangement under an original contract with a company entered into prior to January 1, 2021 if the person was not included in the original contract.

(5) Quasi-governmental employers may choose to report a person on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, even if the person is providing services to the quasi-governmental employer as a core services independent contractor, core services leased employee, or through any other employment arrangement under an original contract with the person or a company entered into prior to January 1, 2021.

Section 7. Report to the state budget director's office and the Legislative Research Commission.

(1)(a) To determine the number of employees of the quasi-governmental employer reported for the prior fiscal year in accordance with KRS 61.5991(3)(a), the KPPA shall add together all employees in regular full-time positions reported by the quasi-governmental employer pursuant to KRS 61.675 and 105 KAR 1:140 in the prior fiscal year.

(b) Persons listed on an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, for the prior fiscal year who are ultimately determined by the KPPA to be employees of the quasi-governmental employer in regular full-time positions shall not be included in the number of employees of the quasi-governmental employer for the prior fiscal year. Such persons may be included in the number of employees of the quasi-governmental employer for a subsequent fiscal year if the person is reported by the quasi-governmental employer in the subsequent fiscal year as an employee in a regular full-time position in accordance with KRS 61.675 and 105 KAR 1:140.

(2) To determine the number of persons providing services to the quasi-governmental employer who were not reported for the prior fiscal year in accordance with KRS 61.5991(3)(b), the KPPA shall use the total number of persons listed on initial and supplemental Form 6756s, Annual Employer Certification of Non-Contributing Service Providers, for the prior fiscal year.

(3) The KPPA shall report the following information for each quasi-governmental employer determined to have falsified data or been noncompliant in accordance with KRS 61.5991(3)(d):

(a) The name of the quasi-governmental employer;

(b) A description of the type of data falsified and the support the KPPA has for believing the data to be falsified, if applicable; and

(c) A description of the nature of the noncompliance, if applicable.

Section 8. Incorporation by Reference. (1) The following materials are incorporated by reference:

Form 6756, "Annual Employer Certification of Non-Contributing Service Providers", September 2021.

Internal Revenue Service Publication 1779, "Independent Contractor or Employee", March 2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the Kentucky Public Pensions Authority's Web site at [kyret.ky.gov](http://kyret.ky.gov).

JOHN CHILTON, Chief Executive Officer

APPROVED BY AGENCY: August 19, 2022

FILED WITH LRC: August 19, 2022 at 11:25 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, November 29, 2022 at 2:00 p.m. at the Kentucky Public Pensions Authority, 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do

not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jessica Beaubien, Policy Specialist, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8570, fax (502) 696-8801, email [Legal.Non-Advocacy@kyret.ky.gov](mailto:Legal.Non-Advocacy@kyret.ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jessica Beaubien, Policy Specialist

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the forms, procedures, and requirements for certain quasi-governmental employers in the Kentucky Employees Retirement System that must provide information to the Kentucky Public Pensions Authority (KPPA) on some independent contractors, leased employees, and other persons providing services for the quasi-governmental employer under similar arrangements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the forms, procedures, and requirements for certain quasi-governmental employers in the Kentucky Employees Retirement System that must provide information to the KPPA on some independent contractors, leased employees, and other persons providing services for the quasi-governmental employer under similar arrangements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statute by establishing the forms, procedures, and requirements for certain quasi-governmental employers in the Kentucky Employees Retirement System that must provide information to the KPPA on some independent contractors, leased employees, and other persons providing services for the quasi-governmental employer under similar arrangements in accordance with KRS 61.5991 and 61.645(9)(e). In particular, KRS 61.5591(1)(c) authorizes the promulgation of an administrative regulation to implement KRS 61.5991.

(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 forms, procedures, and requirements for certain quasi-governmental employers in the Kentucky Employees Retirement System that must provide information to the KPPA on some independent contractors, leased employees, and other persons providing services for the quasi-governmental employer under similar arrangements.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: One (1) entity that provides day-to-day operations for the Kentucky Employees Retirement System: the KPPA. One (1) public pension system: the Kentucky Employees Retirement System. Approximately 100 quasi-governmental employers, including local and district health departments governed by KRS Chapter 212, state-supported universities and community colleges, mental health/mental retardation boards, domestic violence shelters, rape crisis centers, child advocacy centers, and other employers that are eligible to voluntarily cease participation in the Kentucky Employees Retirement System as

provided by KRS 61.522 (excluding county attorneys, the Council on State Governments, the Kentucky Educational Television Foundation, Association of Commonwealth's Attorneys, the Kentucky High School Athletic Association, the Municipal Power Association of Kentucky, the Kentucky Office of Bar Admissions, the Nursing Home Ombudsman, the Kentucky Association of Regional Programs, and the Kentucky Association of Sexual Assault Programs). The number of individuals affected by this administrative regulation is unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The affected quasi-governmental employers will be required to provide the KPPA with information concerning some persons that are providing services for the quasi-governmental employer as independent contractors, leased employees, or through another similar arrangement. If such persons are determined to be employees in regular full-time positions under KRS 61.510(5) and 61.510(21), the affected quasi-governmental employers will be required to prospectively treat the persons as "employees" in accordance with KRS Chapter 61, including reporting employee and employer contributions as required by KRS 61.675 and 105 KAR 1:140. Additionally, in the event of such a determination, the affected employers may be required to remit past delinquent employer contributions as required by KRS 61.552 and 61.675. Finally, the information provided by the KPPA to the state budget director's office and the Legislative Research Commission on the affected quasi-governmental employers may affect subsidies for retirement costs that a quasi-governmental employer may receive pursuant to KRS 61.5991(5) and 61.5991(6).

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities are eligible to receive subsidies for retirement costs pursuant to KRS 61.5991(5) and 61.5991(6).

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

(a) Initially: The costs associated with the implementation of this administrative regulation should be minimal.

(b) On a continuing basis: The costs associated with the implementation of this administrative regulation should be negligible.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the KPPA, which will carry out the implementation and enforcement of this regulation pursuant to KRS 61.505 and 61.5991, are paid from the Retirement Allowance Account (trust and agency funds).

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All affected quasi-governmental employers are subject to the same processes and procedures.

#### 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 approximately 100 quasi-governmental

employers, including local and district health departments governed by KRS Chapter 212, state-supported universities and community colleges, mental health/mental retardation boards, domestic violence shelters, rape crisis centers, child advocacy centers, and other employers that are eligible to voluntarily cease participation in the Kentucky Employees Retirement System as provided by KRS 61.522 (excluding county attorneys, the Council on State Governments, the Kentucky Educational Television Foundation, Association of Commonwealth's Attorneys, the Kentucky High School Athletic Association, the Municipal Power Association of Kentucky, the Kentucky Office of Bar Admissions, the Nursing Home Ombudsman, the Kentucky Association of Regional Programs, and the Kentucky Association of Sexual Assault Programs). Additionally, this administrative regulation impacts the KPPA and the Kentucky Employees Retirement System.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.5991 and 61.645.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The effect of this administrative regulation on the expenditures and revenues of state government agencies in the first full year the administrative regulation is to be in effect is unknown. Local government agencies are not affected by this administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The effect of this administrative regulation on revenues of state government agencies in the first year the administrative regulation is to be in effect is unknown. Local government agencies are not affected by this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The effect of this administrative regulation on revenues of state government agencies in subsequent years the administrative regulation is to be in effect is unknown. Local government agencies are not affected by this administrative regulation.

(c) How much will it cost to administer this program for the first year? The cost to the KPPA to administer this administrative regulation in the first year should be minimal.

(d) How much will it cost to administer this program for subsequent years? The cost to the KPPA to administer this administrative regulation in subsequent years should be negligible.

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

Revenues (+/-): Unknown

Expenditures (+/-): Unknown

Other Explanation: As a result of this administrative regulation, all persons determined to be employees in regular full-time positions as defined by KRS 61.510(5) and 61.510(21) shall be treated prospectively from the determination as "employees" in accordance with KRS Chapter 61, including the required payment of employee and employer contributions to the KPPA on behalf of the Kentucky Employees Retirement System in accordance with KRS 61.675. Additionally, in the event of such a determination, affected employers may be required to remit past delinquent employer contributions as required by KRS 61.552 and 61.675.

(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. 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 is largely unknown. See subsequent responses for more details.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Regulated entities that comply with this regulation and KRS 61.5991 are eligible to receive subsidies toward retirement costs pursuant to

KRS 61.5991(6). The exact dollar amounts of the subsidies are unknown.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Regulated entities that comply with this regulation and KRS 61.5991 are eligible to receive subsidies toward retirement costs pursuant to KRS 61.5991(6). The exact dollar amounts of the subsidies are unknown.

(c) How much will it cost the regulated entities for the first year? The cost to regulated entities in the first year this administrative regulation is to be in effect is unknown.

(d) How much will it cost the regulated entities for subsequent years? The cost to regulated entities in the subsequent years this administrative regulation is to be in effect is unknown.

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

Cost Savings (+/-): Unknown

Expenditures (+/-): Unknown

Other Explanation: As previously stated, the exact dollar amounts of cost savings through subsidies that eligible regulated entities may receive are not known because the subsidies are at the discretion of the General Assembly and percentage-based. See KRS 61.5991(6). Additionally, the exact dollar amounts of expenditures by regulated entities as a result of this administrative regulation are unknown at this time. All persons determined to be employees in regular full-time positions as defined by KRS 61.510(5) and 61.510(21) shall be treated prospectively from the determination as "employees" in accordance with KRS Chapter 61, including the required payment of employer contributions to the KPPA on behalf of the Kentucky Employees Retirement System in accordance with KRS 61.675. Furthermore, in the event of such a determination, regulated entities may be required to remit past delinquent employer contributions as required by KRS 61.552 and 61.675.

(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 an overall negative or adverse economic impact on regulated entities (quasi-governmental employers), as the regulated entities that comply with this administrative regulation and KRS 61.5991 are eligible to receive subsidies for retirement costs.

**FINANCE AND ADMINISTRATION CABINET  
Commonwealth Office of Technology  
Division of Geographic Information Systems  
(New Administrative Regulation)**

**200 KAR 041:010. The Kentucky State Plane Coordinate System.**

RELATES TO: KRS 1.020, 42.630, 42.650, 42.740

STATUTORY AUTHORITY: KRS 42.650(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 42.650(5) authorizes the Division of Geographic Information Systems within the Commonwealth Office of Technology (COT) to promulgate administrative regulations to implement that statute. KRS 1.020 (2) requires the Commonwealth Office of Technology (COT) to establish and publish a series of layered zones covered by geodetically referenced mapping projections adopted and supported by the National Geodetic Survey (NGS) as a component of the National Spatial Reference System (NSRS).

**Section 1. Definitions.**

(1) "COT" means Commonwealth Office of Technology.

(2) "Customary foot" refers to the foot as a linear unit of measure in a generic sense outside the context of a specific conversion regimen.

(3) "Geodetic datum," as referenced herein, means a geometric model representing the earth's size and shape. The mathematical surface of a geodetic datum is an oblate spheroid, called a reference ellipsoid, generally designed to best fit mean sea level either globally or for a stated region. In the context of a geometric framework in which horizontal coordinates are expressed in angular units as latitude and longitude, a geodetic datum is also referred to as a terrestrial reference frame, or simply, reference frame.

(4) "Geodetically referenced mapping projection" means a planar surface mathematically associated with a geodetic datum, or terrestrial reference frame, such that unique positions relative to that datum or terrestrial reference frame can be converted to and from commensurately unique positions on that plane.

(5) "GIAC" means Geographic Information Advisory Council

(6) "NGS" means National Geodetic Survey

(7) "NOAA" means National Oceanic and Atmospheric Administration

(8) "KSPCS" means Kentucky State Plane Coordinate System

(9) The "KSPCS" is the collection of all series applicable to the Commonwealth of Kentucky.

(10) "NSRS" means National Spatial Reference System

(11) "SPCS" means State Plane Coordinate System

(12) A "state plane layer" is a collection of one or more zones, all defined on a common geodetic datum or terrestrial reference frame and designed to achieve, in aggregate, a common theme based on similar performance characteristics that may cover the Commonwealth in part or in whole.

(13) A "state plane series" is a collection of one or more layers defined on a common and unique geodetic datum or terrestrial reference frame representing a complete implementation of the national State Plane Coordinate System (SPCS) for the Commonwealth on that datum or terrestrial reference frame.

(14) A "state plane zone", or "zone," is a geographic region covered by a uniquely defined geodetically referenced mapping projection and generally comprised of a collection of mutually adjacent whole counties such that all included counties lie completely within a given zone. In special cases a zone may partially cover a county or parts of mutually adjacent counties in order to represent a geographic area of specific interest. A zone may cover the Commonwealth either in part or in whole.

**Section 2.**

(1) The KSPCS shall be based on a series of layered zones covered by geodetically referenced mapping projections adopted and supported by the NGS as a component of the NSRS.

(2) The KSPCS shall consist of the following plane series:

(a) Series 1: North American Datum of 1927 (NAD 27);

(b) Series 2: North American Datum of 1983 (NAD 83);

(c) Series 3: North American Terrestrial Reference Frame of 2022 (NATRF2022), except that this series shall not be utilized until the terrestrial reference frames defining SPCS2022 have been officially adopted and are supported by the National Geodetic Survey; and

(d) Additional series based on new datums or terrestrial reference frames as they are officially adopted and supported by NGS as part of the NSRS.

(3) The Commonwealth Office of Technology (COT), as advised by the Geographic Information Advisory Council (GIAC), shall develop and maintain the Kentucky State Plane Coordinate System Standards and Specifications Document, hereinafter referred to as the KSPCS Standards and Specifications Document.

(4) The KSPCS Standards and Specifications Document shall describe, in detail, the standards and specifications for each series of layered zones adopted in subsection (2) of this section. Anticipated series based on new datums or terrestrial reference frames under development by the National Geodetic Survey may be addressed within the KSPCS Standards and Specifications Document but shall not be implemented or utilized until officially adopted and supported by NGS as part of the NSRS.

(5) The KSPCS Standards and Specifications Document shall provide pertinent information and narratives required to adequately describe implementation of the KSPCS, including historical context, underlying concepts, and policy. Additional information not

specifically required herein but deemed necessary to facilitate greater understanding of the KSPCS may also be included within the document.

(6) The KSPCS Standards and Specifications Document shall reconcile or otherwise clarify nomenclature and terminology adopted and/or refined by NGS when such adaptations result in ambiguities relating to similar terms and language utilized within KRS 1:010, KRS 1:020, and/or this KAR.

(7) For each state plane series adopted in subsection (2), the KSPCS Standards and Specifications Document shall provide a detailed description containing:

(a) The series name,

(b) The datum or terrestrial reference frame upon which the series is defined, including the reference ellipsoid and its defining parameters, and

(c) The linear units of measure used to define the series and, when applicable, the forward and reverse conversion factors to be used for converting between the meter and customary foot when representing linear measurements.

(8) For each layer within a KSPCS series, a detailed description shall be provided containing:

(a) The name of the layer, and

(b) The purpose of the layer.

(9) For each zone within a KSPCS layer a detailed description shall be provided containing:

(a) The zone name.

(b) The conformal projection type utilized for that zone.

(c) The Central Parallel, expressed as degrees and whole minutes of latitude including the North direction indicator from the equator. When implementing the double standard parallel definition of the Lambert Conformal Conic projection type, the North Standard Parallel and South Standard Parallel, both expressed as degrees and whole minutes including the North direction indicator from the equator shall be provided in lieu of the Central Parallel.

(d) The Central Meridian, expressed as degrees and whole minutes of longitude including the East or West direction indicator from the prime meridian.

(e) When implementing the double standard parallel definition of the Lambert Conformal Conic projection type, the Base Parallel is provided, expressed as degrees and whole minutes of latitude including the North direction indicator from the equator, representing the basis of the false northing and false easting coordinate values for establishing the location of the projected grid origin. For all other projection types, the Central Parallel shall be used as the basis for the false northing and false easting coordinate values for establishing the location of the projected grid origin.

(f) When defined by the transverse Mercator (TM) or oblique Mercator (OM) projection types, or implementing the single standard parallel definition of the Lambert Conformal Conic projection type, the projection axis scale factor shall be provided and expressed to 6 full decimal places representing the nearest one part per million increment.

(g) The False Northing value, including linear units of measure, to be applied on the projection grid at the intersection of the Central Meridian with the Base Parallel or Central Parallel as specified in item (e) of this section.

(h) The False Easting value, including linear units of measure, to be applied on the projection grid at the intersection of the Central Meridian with the Base Parallel or Central Parallel as specified in item (e) of this section.

(i) When the oblique Mercator conformal projection type is utilized, the Skew Azimuth of the projection axis, as measured clockwise from geodetic north and expressed in whole positive degrees. When expressed as a quadrant measure regardless of direction, the absolute value of the Skew Azimuth shall fall between 5 degrees and 85 degrees inclusively. The Skew Azimuth is defined at the intersection of the Central Meridian and Central Parallel.

(j) When the zone represents a portion of the Commonwealth, a list of the whole counties to which the zone shall exclusively apply. When the zone represents statewide coverage then a statement declaring so shall be provided.

(k) A zone may be utilized beyond its defined counties when

doing so results in improved performance over the default zone applicable to an area of interest.

(10) The use of the KSPCS shall be mandatory for all Executive Branch Agencies and their contractors to manage geospatial data.

(11) The use of the KSPCS shall be voluntary for all private and non-executive branch uses or applications, but is strongly recommended as the desired method for referencing geographic positions and spatial data pertaining to the Commonwealth of Kentucky. However, an election to utilize KSPCS shall require compliance with this regulation.

### Section 3. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) The Kentucky State Plane Coordinate System Standards and Specifications Document.

(b) The Kentucky State Plane Coordinate System Standards and Specifications Document is also referred to as the KSPCS Standards and Specifications Document.

(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 4:30 p.m. or online at <https://geodesy.ky.gov/>.

HOLLY M. JOHNSON, Secretary

KENT ANNESS, Director

APPROVE BY AGENCY: September 14, 2022

FILED WITH LRC: September 14, 2022 at 3:40 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 30, 2022 at 10:00 a.m. at Kentucky Finance and Administration Cabinet Office of General Counsel, 200 Mere Street, 5th Floor, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on November 30, 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: Wm. Robert Long, Jr., Executive Director, Finance and Administration Cabinet, 200 Mero Street, 5th Floor, Frankfort, Kentucky 40622.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Wm. Robert Long, Jr.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the framework through which the Kentucky State Plane Coordinate System (KSPCS) will be defined in accordance with KRS 1:020.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the provisions of KRS 1:020 (2).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation outlines how the Commonwealth Office of Technology will establish and publish a series of layered zones covered by geodetically reference mapping projections adopted and supported by the National Geodetic Survey as a component of the National Spatial Reference System.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the framework through which the Kentucky State Plane Coordinate System (KSPCS) will be defined in accordance with KRS 1:020. Without this framework

administration of the statute will not be possible.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation represents a replacement of 10 KAR 5:010, which established the Kentucky Single Zone Plane Coordinate System of 1983 but is no longer in effect. The previous administrative regulation was severely limited in scope and could no longer support existing requirements of KRS 1:020. This new administrative regulation will extend the existing framework to include all zones in all layers for all series of the KSPCS, including previous series not originally covered by the previous version of KRS 1:020, and future series currently planned by the National Geodetic Survey.

(b) The necessity of the amendment to this administrative regulation: There is no existing administrative regulation to support the requirements of KRS 1:020.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation covers all scenarios applicable to the revised KRS 1:020, past, present, and future.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes the framework through which the Kentucky State Plane Coordinate System (KSPCS) will be defined in accordance with KRS 1:020. Without this framework the efficient administration of the statute will not be possible.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation supports the legal framework through which all individuals, businesses, organizations, or state and local governments engaged in geospatial activities can implement the KSPCS. This regulation essentially provides a service to those parties as opposed to being an encumbrance on their respective activities.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation sets the scope and minimum requirements of a referenced standards and specifications document, and establishes a framework that allows individuals, businesses, organizations, or state and local governments to utilize the KSPCS under the provisions of KRS 1:020. Utilization of KSPCS will be mandatory for all Executive Branch Agencies but will be voluntary for all private and non-executive branch uses or applications.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation does not represent a cost burden to those entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation supports the legal framework through which all individuals, businesses, organizations, or state and local governments engaged in geospatial activities can implement the KSPCS.

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

(a) Initially: This administrative regulation is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This administrative regulation is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation requires no enforcement measures. Implementation will be accomplished through normal general funds allocation for executive branch operations.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? No. This administrative regulation treats all impacted entities 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? This administrative regulation is not compulsory – it establishes a framework that allows individuals, businesses, organizations, or state and local governments to utilize the KSPCS under the provisions of KRS 1:020.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 1.020, 42.630, 42.650 and 42.740.

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

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

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

(c) How much will it cost to administer this program for the first year? There are no estimated additional costs to administer the amendments to this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no estimated additional costs to administer the amendments to this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(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?

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

(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?

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)]

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

**201 KAR 2:460. Out-of-state pharmacy permits.**

RELATES TO: KRS 315.191(1)(a), (d), KRS 315.0351, 201 KAR 2:050

STATUTORY AUTHORITY: KRS 315.191(1)(a), (d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(a), (d) authorize the board to promulgate administrative regulations and issue and renew permits for all pharmacies and require all persons who engages in the practice of the profession of pharmacy for a Kentucky resident hold an active Kentucky pharmacist license. This administrative regulation establishes the requirements to obtain an out of state pharmacy permit to engage in the practice of pharmacy in the Commonwealth.

**Section 1. Inspection Requirements.**

(1) Each pharmacy shall provide to the board and also maintain, in readily retrievable form, the record of a satisfactory inspection conducted within the previous twenty-four (24) month period by the licensing entity of the state where the pharmacy is located.

(2) If no such inspection record is readily available, the record of the satisfactory inspection conducted at the expense of the pharmacy within the previous twenty-four (24) months by a third party recognized by the board to inspect may be accepted.

(3) If no such inspection has been performed within the previous twenty-four (24) months, the board shall conduct or contract with a third party recognized by the board to inspect the pharmacy, for which all costs shall be borne by the applicant.

**Section 2. Pharmacist-in-Charge.**

(1) The pharmacist-in-charge shall directly and timely respond to any lawful request for information from the board or law enforcement authorities.

(2) The pharmacist-in-charge shall be responsible for receiving and maintaining publications distributed by the board.

(3) The pharmacist-in-charge shall be responsible for answering the toll-free telephone service six days a week and a minimum of forty hours per week. The toll-free telephone number shall be present on the label of each prescription dispensed by the pharmacy to a Kentucky resident. If the pharmacist-in-charge is unavailable, a staff pharmacist with access to patient records may answer the call but the staff pharmacist shall notify the pharmacist-in-charge of the call and provide the pharmacist-in-charge with a callback number for the patient. If the staff pharmacist is unable to resolve the patient's question, the pharmacist-in-charge shall return the call of the patient within forty-eight (48) hours.

**Section 3. Exemptions.**

(1) The board may grant an exemption from the permitting requirements of this section to any nonresident pharmacy which limits its dispensing activity to isolated transactions.

(2) An isolated transaction is defined as a transaction in which:

(a) Dispensing is limited to an established patient of the dispensing pharmacy no more than three (3) times per calendar year; and

(b) On a regular basis.

**Section 4. Applications.**

(1) A prerequisite for receiving a permit as an out-of-state pharmacy is that the facility must be in good standing in the state where it is located and submit evidence consisting of the following:

(a) A copy of a valid license, permit or registration issued by the regulatory or licensing agency of the state in which the pharmacy is located; and

(b) A letter from the regulatory or licensing agency of the state in which the pharmacy is located that certifies the pharmacy is compliant with the pharmacy laws of that state.

(2) Each applicant must disclose the following:

(a) Names and license numbers of all pharmacists and

pharmacist-managers dispensing prescription legend drugs to an ultimate user in Kentucky, the names and, if available, the license or registration numbers of all supportive personnel employed by the out-of-state pharmacy who assist pharmacists in such dispensing;

(b) Names, locations, titles, social security number and date of birth of all principal corporate officers or members, if incorporated; and

(c) If the pharmacy is owned by a partnership or sole proprietorship, the name, location, title, social security number, and date of birth of any partner or owner of the pharmacy.

(d) A report containing this information shall be made on an annual basis and within thirty (30) days of each change for any principal office, pharmacist manager, corporate officer, partner, or owner of the pharmacy.

(3) Each non-resident pharmacy shall develop and provide the board with a policy and procedure manual that sets forth:

(a) Normal delivery protocols and times;

(b) The procedure to be followed if the patient's medication is not available at the out-of-state pharmacy, or if delivery will be delayed beyond normal delivery time;

(c) The procedure to be followed upon receipt of a prescription for an acute illness, which shall include a procedure for delivery of the medication to the patient from the out-of-state pharmacy at the earliest possible time, or an alternative that assures the patient the opportunity to obtain medication at the earliest possible time;

(d) The procedure to be followed when the out-of-state pharmacy is advised that the patient's medication has not been received within the normal delivery time and that the patient is out of medication and requires interim dosage until mail prescription drugs become available; and

(e) The procedure for shipping products pursuant to FDA approved and manufacturer guidelines.

(4) An applicant for an out-of-state pharmacy permit must designate a resident agent in Kentucky for service of process. Any such out-of-state pharmacy that does not so designate a resident agent shall be deemed to have appointed the Secretary of State of the State of Kentucky to be its true and lawful attorney upon whom process may be served. All legal process in any action or proceeding against such pharmacy arising from shipping, mailing or delivering prescription drugs in Kentucky shall be served on the resident agent. In addition, a copy of such service of process shall be mailed to the out-of-state pharmacy by certified mail, return receipt requested, at the address of the out-of-state pharmacy as designated on the registration form filed with the board. Any out-of-state pharmacy which does not register in this state, shall be deemed to have consented to service of process on the Secretary of State as sufficient service.

(5) Any person who ships, mails, or delivers prescription drugs to Kentucky residents from more than one (1) out-of-state pharmacy shall register each pharmacy separately.

(6) An out-of-state pharmacy shall report to the disciplinary action taken by another state or jurisdiction against the pharmacy or pharmacy staff within thirty (30) days of final case resolution.

(7) An applicant shall submit photographs of the exterior of the pharmacy building and working areas.

(8) An out-of-state pharmacy that has not completed the application process and is not permitted by the board may not advertise its services to residents of Kentucky.

(9) A person who engages in the practice of the profession of pharmacy for a Kentucky resident shall hold an active Kentucky pharmacist license except under Section 3 of this administrative regulation.

(10) All pharmacy staff shall be provided a copy of this administrative regulation.

CHRISTOPHER HARLOW, Pharm.D., Executive Director

APPROVED BY AGENCY: September 14, 2022

FILED WITH LRC: September 14, 2022 at 3:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 30, 2022, at 9:00 a.m. Eastern Time via zoom teleconference and at the Kentucky Transportation Cabinet Auditorium, 200 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 November 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Christopher Harlow

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation clarifies the requirements to obtain an out of state pharmacy permit to engage in the practice of pharmacy in the Commonwealth. This new administrative regulation requires that a person who engages in the practice of the profession of pharmacy for a Kentucky resident shall hold an active Kentucky pharmacist license. This new administrative regulation also clarifies provisions in KRS 315.0351.

(b) The necessity of this administrative regulation: This new administrative regulation provides rules where KRS 315.0351 is silent or ambiguous. Furthermore, this new administrative regulation is necessary for the Kentucky Board of Pharmacy as it serves the Commonwealth to promote, preserve, and protect the health, safety, and welfare through effective regulation of the practice of pharmacy.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This new administrative regulation, authorized by KRS 315.191(1)(a), (d), establishes the requirements to obtain an out of state pharmacy permit to engage in the practice of pharmacy in the Commonwealth and requires a person who engages in the practice of the profession of pharmacy for a Kentucky resident to hold an active Kentucky pharmacist license. This new administrative regulation conforms to the authorizing statute because the authorizing statute gives the board authority to promulgate administrative regulations and issue and renew permits and licenses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new administrative regulation provides rules where KRS 315.0351 is silent or ambiguous. Furthermore, this new administrative regulation is necessary for the Kentucky Board of Pharmacy as it serves the Commonwealth to promote, preserve, and protect the health, safety, and welfare through effective regulation of the practice of pharmacy.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates that out of state pharmacies and persons who are engaged in the practice of the profession of pharmacy for a Kentucky resident will be impacted by this new 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: 1. Out of state pharmacies and persons who are engaged in the practice of the profession of pharmacy for a Kentucky resident will have to familiarize themselves with this new regulation. 2. This new administrative regulation establishes the requirements to obtain an out of state pharmacy permit. 3. This new administrative regulation requires that persons who are engaged in the practice of the profession of pharmacy for a Kentucky resident will have to obtain an active Kentucky pharmacist license. 4. The board will help educate identified entities of this new regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Out of state pharmacies will incur costs associated with obtaining and renewing an out of state pharmacy permit pursuant to 201 KAR 2:050. Persons who are engaged in the practice of the profession of pharmacy for a Kentucky patient will incur costs associated with obtaining and renewing a Kentucky pharmacist license pursuant to 201 KAR 2:050.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The ability to serve Kentucky patients.

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

(a) Initially: +20,000

(b) On a continuing basis: +20,000

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Board revenues from fees as prescribed by 201 KAR 2:050.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be required because of this new regulation. However, out of state pharmacists that need to comply with this regulation will need to follow 201 KAR 2:030 and will pay the licensing and renewal fees as dictated in 201 KAR 2:050.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This new administrative regulation does not establish fees or directly or indirectly increase any fees. This administrative regulation does require out of state pharmacists practicing pharmacy for Kentucky patients to be licensed by the Board of Pharmacy. There is a fee for licensing pursuant to 201 KAR 2:050.

(9) TIERING: Is tiering applied? Tiering is not applied because this new regulation is applicable to all out of state licensees and permit holders 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 Board of Pharmacy will be impacted by this new administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.191(1)(a), (d) permits the board to promulgate administrative regulations pursuant to KRS Chapter 13A necessary to regulate and control all matters set forth in this chapter relating to pharmacists, pharmacist interns, pharmacy technicians, pharmacies, wholesale distributors, and manufacturers.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This new administrative will generate revenue associated with permitting out of state pharmacies, but out of state pharmacies are already permitted by the Board pursuant to KRS 315.0351. This



regulation does clarify that all persons engaged in the practice of the profession of pharmacy for a Kentucky resident must also be licensed. This could lead to generation of new revenue for individuals who have been practicing without a license in Kentucky.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation specifically will not generate revenue, however the amendment to 201 KAR 2:030 creating a licensing mechanism for out of state pharmacists will generate revenue.

(c) How much will it cost to administer this program for the first year? Approximately \$20,000.

(d) How much will it cost to administer this program for subsequent years? Approximately \$20,000.

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

Revenues (+/-): 0

Expenditures (+/-): -20,000

Other Explanation: This administrative regulation on its own does not create revenue; however, 201 KAR 2:030 is the mechanism for out of state pharmacists to become licensed in the Commonwealth. That regulation does propose a fee of \$250 for out of state pharmacist licenses.

(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 for the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There is no cost savings for subsequent years.

(c) How much will it cost the regulated entities for the first year? The cost for permitting and licensing out of state facilities and pharmacists.

(d) How much will it cost the regulated entities for subsequent years? The cost for permitting and licensing and renewals for out of state facilities and pharmacists.

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

Cost Savings (+/-): 0

Expenditures (+/-): 0

Other Explanation: This regulation does not create new fees. However, this regulation does contain a rule requiring out of state facilities to be permitted and for non-resident pharmacists to be licensed. Non-resident permits are issued pursuant to KRS 315.0351 and a fee established in 201 KAR 2:050. Non resident pharmacist licenses are issued pursuant to 201 KAR 2:030 and fees as prescribed in 201 KAR 2:050.

(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 does not have a major economic impact.

**BOARDS AND COMMISSIONS**  
**Board of Dentistry**  
**(New Administrative Regulation)**

**201 KAR 8:601. Mobile Dental Facilities and Portable Dental Units.**

RELATES TO: KRS 313.021, 313.022.

STATUTORY AUTHORITY: KRS 218A.205(3), 313.022, 313.060(1).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.021(1)(a) requires the board to govern mobile dental facilities and portable dental units. KRS 313.021(1)(c) requires the board to

promulgate administrative regulations for any license or registration created by the board. KRS 313.022(1) requires the board to promulgate administrative regulations to prescribe a reasonable schedule of fees, charges, and fines. This administrative regulation establishes requirements for the issuance and renewal of registrations for mobile dental facilities and portable dental units by the board.

Section 1. Definitions. (1) "Mobile dental facility" means a self-contained facility in which dentistry is practiced and that may be towed, moved, or transported from one (1) location to another.

(2) "Portable dental unit" means a non-facility in which dental equipment used in the practice of dentistry is transported and used on a temporary basis at an out-of-office location.

(3) "Registration holder" means a dentist or employer of a dentist which is the principal operator of a mobile dental facility or portable dental unit registered pursuant to this administrative regulation.

Section 2. Scope and Applicability. (1) The practice of dentistry and dental hygiene conducted via mobile dental facility or portable dental unit shall be held to the same standard of care and scope of practice requirements as any other patient encounter provided for under KRS Chapter 313 and 201 KAR Chapter 8.

(2) Mobile dental facilities and portable dental units engaged exclusively in charitable dental practices as governed by 201 KAR 8:581 shall be exempt from Sections 3(2)(b) and 7(2)(b) of this administrative regulation.

(3) Public health programs governed by KRS 313.040 (8) and 201 KAR 8:562 Section 15 shall be exempt from the requirements of this administrative regulation.

(4) Any violations of KRS Chapter 313 or 201 KAR Chapter 8 related to the operation of a mobile dental facility or portable dental unit shall be subject to disciplinary action pursuant to KRS 313:080 and 313:100.

Section 3. Registration of Mobile Dental Facilities and Portable Dental Units. (1) Each mobile dental facility or portable dental unit doing business in Kentucky shall be registered with the board and abide by the provisions of this administrative regulation.

(2) To register a mobile dental facility or portable dental unit, the intended registration holder shall:

(a) Submit a completed and signed Application for Mobile Dental Facility or Portable Dental Unit Registration, which shall contain:

1. The name of the intended registration holder;
2. An official business or mailing address of record, which shall not be a post office box;
3. An official phone number and email address of record; and
4. The name and license number of any individual(s) licensed with the board who are providing services on behalf of or in partnership with the registration holder.

(b) Pay the fee required by 201 KAR 8:520.

Section 4. Emergency and Follow Up Care. (1) Unless an accommodation is issued by the board, a mobile dental facility or portable dental unit shall maintain a signed agreement with a fixed general practice or pediatric dental office within seventy (70) miles of the treatment location that will accept timely referrals for follow up and emergency care.

(2) At the conclusion of each patient's visit, the mobile dental facility or portable dental unit shall provide each patient with an information sheet that contains:

(a) Contact information that allows the patient to reach the registration holder or dentist of record for emergency care, follow-up care, access to dental records, or information about treatment received;

(b) The name of the dentist or dental hygienist, or both, who provided services;

(c) A description of the diagnostic findings, the treatment rendered; and

(d) A plan for follow-up care, including contact information to a dental office as provided for in subsection (1) of this Section.

(3) A mobile dental facility or portable dental unit that accepts a

patient and provides preventive treatment, including prophylaxis, radiographs, and fluoride, but does not provide referral information for comprehensive treatment when such treatment is indicated, shall be considered in violation of this Section.

Section 5. Patient Records and Communications. (1) Mobile dental facilities and portable dental units shall maintain:

(a) A written or electronic record detailing the location where services are provided, the dates of each session, and the services administered;

(b) Patient records of prior treatment to have readily available during subsequent treatment visits; and

(c) All dental and official records at the address of record when not in transit.

(2) Mobile dental facilities and portable dental units shall maintain a reliable means of communication onsite and at the address of record to:

(a) Contact necessary parties in the event of a medical or dental emergency;

(b) Allow the patient or the parent or guardian of the patient treated to contact the provider for emergency care, follow-up care, or information about treatment received; and

(c) Allow a provider who renders follow-up care to request and receive treatment information, including radiographs.

(3) Mobile dental facilities and portable dental units doing business in Kentucky shall not perform services on minors without a signed consent form from the parent or guardian, which shall indicate that:

(a) If the minor already has a dentist, the parent or guardian should continue to arrange dental care through that provider; and

(b) The treatment of the child by the mobile dental facility may affect the future benefits that the child may receive under private and public insurance plans.

Section 6. General Operating Requirements. Mobile dental facilities and portable dental units shall:

(1) Operate under the supervision of a Kentucky-licensed dentist, who shall be responsible for all aspects of patient care.

(2) Display in or on the mobile dental facility or portable dental unit a current valid registration issued pursuant to this administrative regulation in a manner which is readily observable by patients or visitors;

(3) Conform to all applicable federal, state, and local laws, regulations, and ordinances dealing with radiographic equipment, flammability, construction, sanitation, zoning, infectious waste management, universal precautions, Occupational Safety and Health Administration guidelines, and Centers for Disease Control and Prevention protocols; and

(4) Be driven or transported by a driver possessing a valid driver's license appropriate for the operation of the vehicle.

Section 7. Registration Renewal and Reinstatement. (1) Each mobile dental facility and portable dental unit registration shall expire on December 31 of even-numbered years.

(2) A registration holder desiring renewal of an active mobile dental facility or portable dental unit registration shall:

(a) Submit a completed Application for Renewal of Mobile Dental Facility or Portable Dental Unit; and

(b) Pay the fee required by 201 KAR 8:520.

(3) A registration holder desiring reinstatement of a mobile dental facility or portable dental unit registration that has expired within ninety (90) days shall:

(a) Submit a completed Application for Renewal of Mobile Dental Facility or Portable Dental Unit; and

(b) Pay the fee required by 201 KAR 8:520.

(4) A registration holder desiring reinstatement of a mobile dental facility or portable dental unit registration that has been expired for more than 90 days shall:

(a) Reapply for registration as required by Section 3(2) of this administrative regulation; and

(b) Be subject to disciplinary action pursuant to KRS 313:080 and 313:100.

Section 8. Notification Requirements. (1) The registration

holder shall notify the board of any changes to the information required by Section 3(2)(a) of this administrative regulation within thirty (30) days of the change.

(2) If ownership of the mobile dental facility or portable dental unit changes, the prior registration is invalid, and a new application shall be submitted to the board prior to continued operation of the mobile dental facility or portable dental unit.

(3) If a mobile dental facility or portable dental unit ceases operations, the registration holder shall notify the board within thirty (30) days after the last day of operation and report on the disposition of patient records.

Section 9. Incorporation by Reference. (1) The following material shall be incorporated by reference:

(a) "Application for Mobile Dental Facility or Portable Dental Unit Registration," Sept. 2021; and

(b) "Application for Renewal of Mobile Dental Facility or Portable Dental Unit Registration," Sept. 2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. through 4:30 p.m. This material is also available on the board's website at <http://dentistry.ky.gov>.

JEFFREY ALLEN, Executive Director

APPROVED BY AGENCY: September 12, 2022

FILED WITH LRC: September 13, 2022 at 2:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this Amendment shall be held on November 22, 2022 at 4:00 p.m. Eastern Time at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed Amendment. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed Amendment. Written comments shall be accepted through November 30, 2022. Send written notification of intent to be heard at the public hearing, or written comments on the proposed Amendment to the contact person below.

CONTACT PERSON: Jeff Allen, Executive Director, Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email [jeffrey.allen@ky.gov](mailto:jeffrey.allen@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeff Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for mobile dental facilities and portable dental units.

(b) The necessity of this administrative regulation: KRS 313.021(1)(c) requires the board to promulgate administrative regulations for any license or registration created by the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes requirements for the issuance and renewal of registrations for mobile dental facilities and portable dental units by the board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements for the issuance and renewal of registrations for mobile dental facilities and portable dental units in compliance with state law.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The operators of mobile dental facilities and/or portable dental units will be affected. These operators will primarily be businesses or organizations, which we expect to number no more than in the dozens. Dentists, dental hygienists, and dental assistants in the employ of a mobile dental facility or portable dental unit may be minimally affected as well. Finally, recipients of care from a mobile dental facility or portable dental unit will be impacted, though the exact number of individuals in this category is difficult to determine.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each entity will be required to register as a mobile dental facility or portable dental unit as applicable and maintain the requirements of this administrative regulation throughout the registration period.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Applicable entities are required to pay a registration and renewal fee as established by 201 KAR 8:520.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will result in the increased ability to provide dental care to the community.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Not applicable.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes, as established by 201 KAR 8:520.

(9) TIERING: Is tiering applied? No; this amendment impacts all similarly situated practitioners equally.

#### FISCAL NOTE

(1) What 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, other than the Board of Dentistry itself.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 313.035

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will generate minimal new revenue for state or local government, likely \$10,000 or less annually.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will generate minimal new revenue for state or local government, likely \$10,000 or less annually.

(c) How much will it cost to administer this program for the first

year? This amendment will require minimal additional costs to administer, likely \$10,000 or less annually.

(d) How much will it cost to administer this program for subsequent years? This amendment will require minimal additional costs to administer, likely \$10,000 or less 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.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? None

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? None

(c) How much will it cost the regulated entities for the first year? \$10,000 or less.

(d) How much will it cost the regulated entities for subsequent years? \$10,000 or less.

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.

#### TOURISM, ARTS AND HERITAGE CABINET Department of Tourism (New Administrative Regulation)

**300 KAR 1:021. Process for the distribution of tourism recovery and investment funds appropriated by the General Assembly in the 2022 Regular Session from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021.**

RELATES TO: KRS 91A.350, 148.522, 148.525, Ky Acts Ch. 199 (RS 2022 HB 1)

STATUTORY AUTHORITY: KRS 148.525(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Executive Branch Budget for the 2022-2024 biennium appropriates to the Tourism, Arts and Heritage Cabinet under the budget unit Office of the Secretary a total of \$75,000,000 in fiscal year 2021-2022 from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021. KRS 148.522 provides that the Kentucky Department of Tourism, within the Tourism, Arts and Heritage Cabinet, shall have the authority and responsibility for the promotion, development, and support services for the tourism industry within the Commonwealth. KRS 148.525(3) authorizes the Commissioner of the Department of Tourism to promulgate administrative regulations to carry out the provisions of KRS 148.522. This administrative regulation establishes a uniform and consistent process for the distribution of the tourism recovery and investment funds appropriated by the General Assembly in the 2022 Regular Session from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021.

Section 1. As soon as the funding is available pursuant to the American Rescue Plan Act of 2021, the Kentucky Department of Tourism shall develop and administer the process for distributing tourism recovery and investment funds appropriated by the General Assembly in the 2022 Regular Session from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 to

eligible recipients.

#### Section 2. Definitions.

(1) The "Cabinet" refers to the Kentucky Tourism, Arts and Heritage Cabinet.

(2) The "Department" refers to the Kentucky Department of Tourism.

(3) A "tourism commission" means an organization defined as tourism and convention commission under KRS 91A.350, et. seq., and defined as a designated marketing organization or tourism region committee pursuant to 300 KAR 1:010.

(4) The "State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 (SLFRF)" means the federal funding available as part of the Coronavirus State and Local Fiscal Recovery Fund established under the American Rescue Plan Act (ARPA), Public Law 117-2 (March 11, 2021), as implemented by the Final Rule issued by the U.S. Department of Treasury in 31 C.F.R. Part 35.

(5) "Tourism Marketing Incentive Program" means the Regional Marketing and Matching Funds Program referred to in KRS 91A.390 and 300 KAR 1:010.

(6) "Recipient" means a grantee, tourism commission as defined herein, or other entity eligible to receive funds from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021, as appropriated by the General Assembly in the 2022 Regular Session.

(7) "Program Year" means fiscal year 2022-2023 and fiscal year 2023-2024. Funding allocations will be split between the two fiscal years unless a recipient requests and receives approval to receive the allocation all in one fiscal year.

(8) "Tranche 1 funding" means the \$15,000,000 appropriated by the General Assembly in Acts Chapter 199 (RS 2022 HB 1) L.1.(3)(a) in fiscal year 2021-2022 from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 for marketing and promoting tourism in Kentucky.

(9) "Tranche 2 funding" means the \$25,000,000 appropriated by the General Assembly in Acts Chapter 199 (RS 2022 HB 1) L.1.(3)(b) in fiscal year 2021-2022 from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 for marketing communities in Kentucky.

(10) "Tranche 3 funding" means the \$25,000,000 appropriated by the General Assembly in Acts Chapter 199 (RS 2022 HB 1) L.1.(3)(c) in fiscal year 2021-2022 from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 for attracting meetings and conventions in Kentucky.

(11) "Tranche 4 funding" means the \$10,000,000 appropriated by the General Assembly in Acts Chapter 199 (RS 2022 HB 1) L.1.(3)(d) in fiscal year 2021-2022 from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 for multi-jurisdiction collaborative destination marketing in Kentucky.

(12) "Matching funds" means monies received from a funding source other than federal funds.

Section 3. Eligibility. Eligibility for allocations of federal funds available as part of the Coronavirus State and Local Fiscal Recovery Fund established under the American Rescue Plan Act will depend upon which tranche of money a recipient qualifies for in accordance with the parameters set forth in this regulation.

(1) To qualify for Tranche 1 funding, a grant recipient will be eligible for consideration if it markets and promotes Kentucky as a travel destination.

(2) To qualify for Tranche 2 funding, a grant recipient will be eligible for consideration if it is a tourism commission, as defined herein, who markets communities and provides ten (10) percent or more in Matching funds per application and amount awarded.

(3) To qualify for Tranche 3 funding, a grant recipient will be eligible for consideration if it is a tourism commission, as defined herein, whose counties include arenas, conference centers, or other meeting venues with a minimum of 5000 square feet or outdoor spaces used for sporting events, if it provides a plan for recruiting and attracting meetings and conventions.

(4) To qualify for Tranche 4 funding for the competitive grant program, a grant recipient will be eligible for consideration if at least five (5) tourism commissions, through a designated primary grantee, submit a marketing plan and budget for multi-jurisdiction

collaborative destination marketing and can provide at least ten (10) percent in matching funds per project.

#### Section 4. Applications.

(1) Applications submitted by tourism commissions as defined herein are subject to the following schedule for submission:

(a) Tranche 2 funding applications open on August 1, 2022, and must be received by September 30, 2022;

(b) Tranche 3 funding applications open on August 8, 2022, and must be received by October 7, 2022;

(c) Tranche 4 funding applications open September 12, 2022, and must be received by November 4, 2022.

(d) If additional funding remains following this first round of funding, then a second round of applications will issue in FY 2023-2024 pursuant to a schedule that will be posted on the department's Web site.

(2) Applications for funds appropriated in Tranches 2, 3 and 4 must include documentation of the following at a minimum:

(a) Establish the entity qualifies as a "tourism commission" as defined herein (i.e., proof of non-profit status, letter from fiscal court that organization is part of city or county government, ordinance establishing commission);

(b) Provide a W-9 (showing Federal ID number and entity name);

(c) Demonstrate that the tourism commission was in business before the COVID-19 pandemic on March 6, 2020, and show the economic impact of the COVID-19 pandemic to be eligible to receive recovery and investment funds;

(d) Evidence that applicant is a Kentucky based organization such as proof of registration with the Kentucky Secretary of State or as a Special Purpose Governmental Entity through the Department of Local Government; and

(e) Complete Affidavit for Bidders, Offerors and Contractors.

(3) Applications for Tranche 2 and 4 funding must also include a notarized copy of each applicant's most recent fiscal year budget approved by the applicable governing body identifying the funds being used for the ten (10) percent or more in Matching funds.

(4) Applications for Tranche 2 funding shall describe how the funds will be used to market communities.

(a) Eligible expenses for Tranche 2 funding include:

1. Tourism publications and videos;

2. Media advertisements if fifty (50) miles from destination;

3. Press kits;

4. New billboards and signage if twenty (20) miles from destination;

5. Brochure distribution services;

6. Meeting and convention advertising expenses;

7. Group tour marketplace, meeting and conventions, and consumer travel show expenses;

8. Sponsorship or a bid fee of tourism trade shows, conventions, sporting events and other events;

9. Web site design excluding hosting;

10. Research studies and analysis;

11. Photography;

12. Content that is paid to a business for advertising purposes;

13. Influencers' assistance with social media; and

14. Other expenses if consistent with the purpose of the Regional Marketing and Matching Funds Program.

(b) Ineligible expenses for Tranche 2 funding include:

1. Billboards and signage that does not consist solely of language welcoming a visitor to a community or region;

2. Costs associated with construction of any permanent signage structure;

3. Previously existing signs or maintenance of signs;

4. Postage and freight;

5. Booth space or expenses for county fair or festivals;

6. Booth space or registration expenses at industrial solicitation events;

7. Expenses to attend a conference or meeting without promoting your destination unless expenses are for professional development or hospitality training;

8. Web sites that contain paid advertisements;

9. Sponsorship or bid fees of tourism trade shows, conventions, and other events;

10. Expenditures for in-kind amenities or hospitality events that include alcohol, gratuities, service charges, and tips;
11. Tourism industry events involving Kentucky Tourism Industry Association, Kentucky Association of Convention & Visitor Bureaus, in-state or local events and conferences, and Kentucky association meetings and conferences;
12. Research related to future capital projects;
13. Industrial incentive brochures;
14. General community relocation and development brochures;
15. City or county maps or directories that list businesses and services;
16. Programs, playbills, posters, table tents;
17. Membership and subscription solicitations;
18. Registration and entry forms;
19. Event and contest category or regulation material;
20. Quick print materials such as flyers, handbills, and circulars;
21. Entertainment;
22. Bumper stickers, banners, flags, postcards, lapel pins, or bags;
23. Prizes, trophies, plaques, decorations, paint supplies, and poster board;
24. Items for resale;
25. Amounts paid for Kentucky sales tax;
26. Stationery, letterhead, envelopes, general office supplies and materials;
27. Salaries or other compensation for the staff or personnel of a tourism commission;
28. General operating and administrative costs;
29. Finance charges or late payment fees;
30. In-kind contributions, which also shall not be included as part of an applicant's match;
31. Expenditures in violation of law; and
32. Other expenses deemed ineligible by the Department if inconsistent with the Regional Marketing and Matching Funds Program.

(5) Applications for Tranche 3 funding shall specify:

- (a) the counties within the tourism commission's jurisdictions that include arenas, conference centers, or other meeting venues with a minimum of 5,000 square feet or outdoor spaces used for sporting events; and
- (b) How the funds will be used to attract professionally organized meetings, conventions, conferences, exhibitions, expositions, and trade shows that involve:
  1. New events not held in the destination or venue for at least three years;
  2. Multi-day events contracted on or after July 1, 2022;
  3. Competitive bidding of events; and
  4. Athletes from outside the area (100 miles or more).
- (c) How the funds will be used to attract amateur and professional competitive sporting events or tournaments that involve:
  1. New events not held in the destination or venue for at least three years;
  2. Multi-day events contracted on or after July 1, 2022;
  3. Competitive bidding of the event;
  4. Athletes from outside the area (100 miles or more); and
  5. A minimum size of the event of 100+ athletes and coaches.
- (d) For outdoor spaces used for sporting events, grant applications shall be event specific and not related to the overall square footage used.
- (e) Local festivals, in-state association meetings that rotate on an annual basis, weddings, fraternal events (unless a national conference), social events, and motor coach/group tours (unless a national conference) are not eligible for Tranche 3 funding.
- (f) Eligible expenses for the Tranche 3 funding include:
  1. Marketing and advertising such as video, print, digital, sponsorships, on-site events and other expenses related to promoting the destination as a meeting/conference destination;
  2. Underwriting incentives for offsetting event expenses such as venue or room rental, transportation costs during events, audio visual rental and services, discount on food and beverage, pipe, drape, tables, and chairs;
  3. Per room night confirmed incentives for selection;

4. New research and consultants to build sales strategies;
5. Familiarization trips for meeting planners or board meetings with intent to host larger event;
6. Sales missions for recruiting meetings or conventions;
7. New third party lead generation fees;
8. Refundable bid or RFP fees tied to hosting industry events and conferences;
9. Retention incentives due to increased costs (specifically six (6) percent sales tax on meeting room rentals) for events already contracted but occurring after July 1, 2022; and
10. Other expenses deemed eligible by the Department if consistent with the funding mandate of the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021.

(g) Ineligible expenses for the Tranche 3 funding include:

1. Funds used to replace an organization's tourism funding commitment for existing budgets, marketing and/or staffing;
2. Non-refundable bid or RFP fees;
3. Renovations or building permanent structures at facility for event;
4. Expenses from an event that was contracted prior to December 7, 2021;
5. General operating or administrative expenses such as travel reimbursement and salaries;
6. Purchase of permanent equipment;
7. Purchase of alcohol for meetings, events, sponsorships or related functions;
8. Hiring of permanent or temporary staff;
9. Purchase or production of promotional items; and
10. Other expenses deemed ineligible by the department if inconsistent with the funding mandate of the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021.

(6) Applications for Tranche 4 funding shall specify:

- (a) the identity of the designated primary grantee, who will be the point of contact for plan and post-plan reporting, and at least four (4) tourist commissions applying for the grants;
- (b) a multi-county marketing plan and budget that shows how the plan will assist in recovery from the pandemic, with priority given to initiatives that have the potential for long-term transformational impacts;
- (c) The requested dollar amount up to the maximum of \$500,000;
- (d) Eligible expenses for the Tranche 4 funding include:
  1. Tourism publications and videos;
  2. Media advertisements if fifty (50) miles from destination;
  3. Press kits;
  4. New billboards and signage if twenty (20) miles from destination;
  5. Brochure distribution services;
  6. Meeting and convention advertising expenses;
  7. Group tour marketplace, meeting and conventions, and consumer travel show expenses;
  8. Sponsorship or a bid fee of tourism trade shows, conventions, sporting events and other events;
  9. Web site design excluding hosting;
  10. Research studies and analysis;
  11. Photography;
  12. Content that is paid to a business for advertising purposes;
  13. Influencers' assistance with social media; and
  14. Other expenses deemed eligible by the department if consistent with the funding mandate of the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021.
- (e) Ineligible expenses for the Tranche 4 funding include:
  1. Billboards and signage that does not consist solely of language welcoming a visitor to a community or region;
  2. Costs associated with construction of any permanent signage structure;
  3. Previously existing signs or maintenance of signs;
  4. Postage and freight;
  5. Booth space or expenses for county fair or festivals;
  6. Booth space or registration expenses at industrial solicitation events;
  7. Expenses to attend a conference or meeting without promoting your destination unless expenses are for professional development or hospitality training;

8. Web sites that contain paid advertisements;
9. Sponsorship or bid fees of tourism trade shows, conventions, and other events;
10. Expenditures for in-kind amenities or hospitality events that include alcohol, gratuities, service charges, and tips;
11. Tourism industry events involving Kentucky Tourism Industry Association, Kentucky Association of Convention & Visitor Bureaus, in-state or local events and conferences and Kentucky association meetings and conferences;
12. Research related to future capital projects;
13. Industrial incentive brochures;
14. General community relocation and development brochures;
15. City or county maps or directories that list businesses and services;
16. Programs, playbills, posters, table tents;
17. Membership and subscription solicitations;
18. Registration and entry forms;
19. Event and contest category or regulation material;
20. Quick print materials such as flyers, handbills, and circulars;
21. Entertainment;
22. Bumper stickers, banners, flags, postcards, lapel pins, or bags;
23. Prizes, trophies, plaques, decorations, paint supplies, and poster board;
24. Items for resale;
25. Amounts paid for Kentucky sales tax;
26. Stationery, letterhead, envelopes, general office supplies and materials;
27. Salaries or other compensation for the staff or personnel of a tourism commission;
28. General operating and administrative costs;
29. Finance charges or late payment fees;
30. In-kind contributions, which also shall not be included as part of an applicant's match;
31. Expenditures in violation of law; and
32. Other expenses deemed ineligible by the Department if inconsistent with the funding mandate of the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021.

#### Section 5. Approval of Applications.

(1) With respect to the Tranche 2 funding, the Commissioner of Tourism shall administer the grant program by reviewing each application and determining the applicant's eligibility for funding. Applicant's funding amount will be determined by the formula for each county's share of economic impact based on the department's 2019 Economic Impact of Tourism in Kentucky study conducted by Tourism Economics.

(2) With respect to Tranche 3 funding, the Commissioner of Tourism shall administer the grant program by reviewing each application and determining the applicant's eligibility for funding. Eligible tourism commissions will be awarded grants up to a maximum amount according to the following:

- (a) 125,000 square feet and above up to a maximum \$5 million;
- (b) 75,000 to 124,999 square feet up to a maximum \$3 million;
- (c) 35,000 to 74,999 square feet up to a maximum \$1.5 million;
- (d) 15,000 to 34,999 square feet up to a maximum \$500,000;
- (e) 10,000 to 14,999 square feet up to a maximum \$200,000;
- (f) 5,000 to 9,999 square feet up to a maximum of \$100,000; or
- (g) For outdoor spaces used for sporting events, up to a maximum of \$100,000 per event.

(3) With respect to Tranche 4 funding, the Commissioner of Tourism shall develop and administer a competitive grant program that oversees a review committee comprised of state employees within the cabinet. The review committee will utilize a categorical scoring method that considers the following:

- (a) The plan's ability to attract new visitors to Kentucky;
- (b) The plan's ability to assist in recovery from the COVID-19 pandemic;
- (c) The plan's potential for long-term transformational impacts and priority will be given to these initiatives;
- (d) The measurable economic impact to Kentucky;
- (e) The applicants' ability to execute and provide required

reporting; and

(f) New projects that demonstrate a level of creativity.

(4) Notification of all grant awards will be provided to each grantee or applicant by letter and then memorialized by a "Memorandum of Agreement" stating the amount and terms of the funding grant, which the grantee or applicant shall sign and return to the Kentucky Department of Tourism; or by a letter stating why an applicant's projects have been denied funding.

(5) All projects receiving funds from Tranche 1, 2 and 4 must be completed on or before December 31, 2024. Projects receiving funds from Tranche 3 need to be obligated by December 31, 2024 and the funds fully expended by December 31, 2026.

Section 6. Reporting. Recipients shall provide a report to the Department of Tourism and the Legislative Research Commission detailing expenditures and outcomes including return on investment for affected areas by September 1 of each year. Such reports shall be in a format designed to allow the Commonwealth of Kentucky to comply with the U.S. Treasury's SLFRF Compliance and Reporting Guidance (treasury.gov), incorporated by reference herein.

#### Section 7. Forfeited and Unused Funds.

(1) Funds allocated to an approved project shall be forfeited if:

- (a) Documentation required by the provisions of this administrative regulation is not submitted timely;
- (b) An approved project does not materialize; or
- (c) A completed project did not remain in compliance with program requirement.

(2) Funds used in violation of the program may be subject to remediation and recoupment. The Department of Tourism may identify funds used in violation through reporting or other sources. Recipients will be provided with an initial written notice of recoupment and an opportunity to submit a request for reconsideration before the Department of Tourism provides a final notice of recoupment. If the recipient receives an initial notice of recoupment and does not submit a request for reconsideration, the initial notice will be deemed the final notice. The Department of Tourism may pursue other forms of remediation and monitoring in conjunction with, or as an alternative to, recoupment.

(3) At the end of a program year, funds that are forfeited, subject to recoupment, or unused shall be available for additional rounds of application funding if obligated by December 31, 2024 and if spent by December 31, 2026.

Section 8. Audits. The department may request the State Auditor to audit a tourism project governed by this administrative regulation.

#### Section 9. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) U.S. Department of Treasury Final Rule for Coronavirus State and Local Fiscal Recovery Funds, 31 C.F.R. Part 35 (effective April 1, 2022);

(b) U.S. Department of Treasury Compliance and Reporting Guidance for the SLFRF Program (June 17, 2022);

(c) Kentucky Dept of Tourism/Tourism Recovery and Investment ARPA Application - Tranche 2 Application – tourism commissions (July 2022);

(d) Kentucky Dept of Tourism/Tourism Recovery and Investment ARPA Application - Tranche 3 Application – Meetings and Conventions (July 2022);

(e) Kentucky Dept of Tourism/Tourism Recovery and Investment ARPA Application - Tranche 4 Application – Multi-County (July 2022);

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, from the Department of Tourism, 500 Mero Street, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available at the Department of Tourism's Web site at [www.kytourism.com/industry/Programs](http://www.kytourism.com/industry/Programs); or For Tranche 2 Grant (DMO) 502/892-3217 or TAH KDTARPADMO; Tranche 3 Grant (Meetings & Conventions) 502/892-3229 or TAH KDTARPAMEET; Tranche 4 Grant (Multi County) 502/892-3231 or TAH

KDTARPAMULTICO.

MICHAEL MANGEOT, Commissioner  
MICHAEL E. BERRY, Secretary

APPROVED BY AGENCY: August 25, 2022

FILED WITH LRC: August 25, 2022 at 10:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this emergency administrative regulation shall be held on October 28, 2022, at Kentucky Department of Travel at 500 Mero Street, 5<sup>th</sup> Floor Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through October 31, 2022. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mangeot, Commissioner, 500 Mero Street, 5th Floor, Frankfort, Kentucky 40601, phone (502) 564-4270, fax (502) 564-1079, email Michael.mangeot@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael A. Mangeot, Commissioner,

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a uniform and consistent process for the distribution of the tourism recovery and investment funds appropriated by the General Assembly in the 2022 Regular Session from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 and extends the application deadlines given the recent flooding and State of Emergency in certain counties in Eastern Kentucky.

(b) The necessity of this administrative regulation: This regulation is necessary so that those promotional projects within the tourism regional and local nonprofit organizations will be aware of the process for participation in the program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 148.522 authorizes the department to promulgate administrative regulations to implement or carry out the purposes of KRS Chapter 148.525(2).

(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 budget appropriation by establishing a process to implement the distribution of tourism recovery and investment funds.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Tourism anticipates more than one-hundred (100) applicants to participate in this program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulation provides clarification about the process for distributing tourism recovery and investment

funds appropriated by the General Assembly in the 2022 Regular Session from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 to eligible recipients.

(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 application cost to the entities to apply for the program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As recognized by the federal government in the American Rescue Plan, the tourism, travel, and hospitality industry was one of the most severely impacted as a result of the COVID-19 pandemic. This regulation provides much needed funding to eligible entities that will market and promote tourism in Kentucky, which will benefit all of the citizens of the Commonwealth.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: The Executive Branch Budget for the 2022-2024 biennium appropriates to the Tourism, Arts and Heritage Cabinet under the budget unit Office of the Secretary a total of \$75,000,000 in fiscal year 2021-2022 from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021.

(a) Initially: No expenses or an unknown amount will be incurred.

(b) On a continuing basis: No expenses or an unknown amount will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funding available as part of the Coronavirus State and Local Fiscal Recovery Fund established under the American Rescue Plan Act as implemented by the Final Rule issued by the U.S. Department of Treasury in 31 C.F.R. Part 35.

(7) Provide an assessment of whether an 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 new regulation does not establish or create a fee or increase funding.

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

(9) TIERING: Is tiering applied? Yes. The only tiering applicable in this regulation is in the Tranche 3 funds for meetings and conventions. The maximum grant amounts are tiered according to the square footage of arenas, conference centers, or other meeting venues located within the tourism commissions. All applicants who apply for any other incentives are eligible for general funding.

#### 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? Kentucky Department of Tourism and local cities and counties located within tourism commissions will be positively 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. The appropriation by the General Assembly in Acts Chapter 199 (RS 2022 HB 1) L.1.(3)(a) in fiscal year 2021-2022 from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 for marketing and promoting tourism in Kentucky.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Expenditures and revenues for the Kentucky Department of Tourism will not change. The current budget of the Department of Tourism funds the administrative costs of the Program. Staff within the Department of Tourism administer the program. The monies that the Program distributes within the tourism regions are for tourism projects and are not used to administer the program. The monies distributed, however, may contribute to the revenues of the tourism commissions.

(a) How much revenue will this administrative regulation



generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Unknown.

(b) How 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 from the administration of this administrative regulation. However, the Program itself is expected to generate revenue in the tourism industry itself and throughout the Commonwealth in terms of increase tourism dollars. If necessary, estimates can be provided based upon the most recent Compass Longwoods International Travel USA Visitor Profile.

(c) How much will it cost to administer this program for the first year? The Department of Tourism staff will administer the program.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs 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 (+/-): \$0 change

Expenditures (+/-): \$0 change

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? Unknown

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Unknown

(c) How much will it cost the regulated entities for the first year? No additional costs.

(d) How much will it cost the regulated entities for subsequent years? No additional costs.

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

Cost Savings (+/-): 0

Expenditures (+/-): 0

Other Explanation: 0

(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)]. Not applicable. There is no additional cost to charge and/or process the fees.

**JUSTICE AND PUBLIC SAFETY CABINET  
Department of Criminal Justice Training  
(New Administrative Regulation)**

**503 KAR 3:130. Online basic and in-service training.**

RELATES TO: KRS 15A.070, 15.440

STATUTORY AUTHORITY: KRS 15A.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.070(1) requires the Department of Criminal Justice Training to establish, supervise, and coordinate training programs and schools for law enforcement personnel. KRS 15A.070(5) authorizes the Department of Criminal Justice Training to promulgate administrative regulations. This administrative regulation establishes requirements for basic and annual in-service course instruction to be offered electronically and online through remote learning.

**Section 1. Definitions.**

(1) "Asynchronous learning" means online instruction that allows students to access content or participate in learning, but does not require students and instructors to participate at the same time or in the same place.

(2) "Blended learning" means a course of study that includes

both traditional in person classroom instruction and synchronous learning or asynchronous learning.

(3) "Online learning" means instruction that takes place through electronic technologies and media over the internet.

(4) "Recruit" is defined by 503 KAR 3:005(9).

(5) "Student" means a trainee or recruit as defined by 503 KAR 3:005.

(6) "Synchronous learning" means online instruction that occurs between students and instructors at the same time, but not in the same place, using video technology.

(7) "Trainee" is defined by 503 KAR 3:005(12).

**Section 2. Implementation.** (1) By no later than January 1, 2024, at least ten (10) percent of the total hours of course instruction required to be completed for basic training under KRS 15.440(1)(d) shall be made available electronically and online for candidates to complete through remote learning;

(2) By no later than January 1, 2025, at least thirty (30) of the total course offerings required to be completed by an officer for annual in-service training under KRS 15.440(1)(e) that is offered or sponsored by the Department of Criminal Justice Training shall be made available electronically and online to complete through remote learning;

(3) The instruction provided by the Department of Criminal Justice Training under this section shall not be in the subject areas that require the demonstration of use of physical skill for the purposes of evaluating the participant's proficiency; and

(4) The course offerings and instruction required to be provided under subsection (2) of this section shall be available throughout the entire calendar year and spread out over a reasonable period of time so as not to require attendance or participation for the entirety of a single work week.

**Section 3. Instruction Offered.** Online and blended courses shall be identified annually through the department's Web site at <https://www.docjt.ky.gov/> in the training area including through the registration system and course listings. The schedule of classes shall state whether a course is synchronous or asynchronous and identify any software and hardware requirements for participation in online class sessions.

**Section 4. Online Learning.** (1) A student participating in online learning through the department shall:

(a) Actively participate in class learning activities regardless of the delivery method;

(b) Successfully complete and submit all assignments for the online learning event within the deadline set for the specific online training event including:

1. Electronic documents;
2. Discussion boards;
3. Blogs;
4. Polls;
5. Group assignments; and
6. Any other assigned work from the instructor.

(c) Complete assignments, online lessons, and tests only in a location conducive to learning, free of distraction, that ensures the safety of the student.

(d) Comply with all course requirements within the time required as described in the Kentucky Law Enforcement Council approved curriculum or schedule book on the department's Web site at <https://www.docjt.ky.gov/> in the training area;

(e) Have equipment that meets the minimum requirements for the course;

(f) Have an approved internet browser as well as a stable internet connection and sufficient internet speed capable of meeting course requirements, including the ability to:

1. Stream online video;
2. Engage in web conferencing;
3. Receive information and documents; and
4. Use software programs required within the course; and

(g) Test equipment that will be used for the online course pursuant to individual course requirements at least five (5) days prior to the start of the online training.

(2) If a student is unable to meet technology requirements for



the course or the student's testing indicates a problem for participation, the student shall contact the department at least five (5) days prior to the start of the online training to try to address the issue.

(3) If a student is unable to correct the issue prior to the start of the course, the student shall be removed from the course roster and may reenroll in another course at a later time.

(4) A student shall comply with 503 KAR Chapter 3.

Section 5. Synchronous Learning. (1) A student shall be:

(a) Viewed and able to be heard online by the instructor and other students; and

(b) Present online with appropriate equipment pursuant to individual course requirements.

(2) A student shall acknowledge as requested the student's attendance at all attendance checks during an online learning event.

Section 6. Asynchronous Learning. (1) For asynchronous learning that is not performed on the department campus, a trainee shall be exempt from the:

(a) Attendance requirement in 503 KAR 3:020 Section 5(8);

(b) Grooming and uniform requirements in 503 KAR 3:020 Section 5(3); and

(c) Tobacco products usage and consumption of food or drink prohibitions in 503 KAR 3:020 Section 5(10)(b).

(2) For asynchronous learning that is not performed on the department campus, a recruit shall be exempt from the:

(a) Attendance requirement in 503 KAR 3:010 Section 6(9);

(b) Grooming and uniform requirements in 503 KAR 3:010 Section 6(3); and

(c) Tobacco products usage and consumption of food or drink prohibitions in 503 KAR 3:010 Section 6(11)(c). 503 KAR 3:130. Online Basic and In-Service Training

NICOLAI JILEK, Commissioner

APPROVED BY AGENCY: August 9, 2022

FILED WITH LRC: August 18, 2022 at 9:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 30, 2022, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. November 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, Justice.RegContact@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for basic and annual in-service course instruction to be offered electronically and online through remote learning.

(b) The necessity of this administrative regulation: This administrative regulation meets statutory requirements in KRS 15A.070 and allows for online training of law enforcement trainees and recruits.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.070(1) requires the Department of Criminal Justice Training to establish, supervise, and coordinate training programs and schools for law enforcement personnel. KRS 15A.070(5) authorizes the Department of Criminal

Justice Training to promulgate administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation makes provision for online training of law enforcement trainees and recruits.

(2) If 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 filing is not an amendment.

(b) The necessity of the amendment to this administrative regulation: The filing is not an amendment.

(c) How the amendment conforms to the content of the authorizing statutes: The filing is not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: The filing is not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 112 DOCJT employees, 8,159 law enforcement trainees, and 427 law enforcement agencies.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Agencies with staff taking online learning courses and classes will have to procure the following equipment if not already within their agency. Computer equipment capable of web-conferencing and video streaming. System: minimum speed of 1.5 Mbps; audio 48 kbps; application sharing from 70 kbps to 500 kbps; webcams and microphones are required while connecting to Blackboard. Current Hardware Requirements Operating System: Windows 10 or newer; Mac OS 10.14 Mojave or newer. Processor: 1 GHz or faster. RAM: 4 GB or higher. 20 GB of available hard-drive space. Screen resolution: 1280x1024 or higher. Reliable and capable internet connection (preferably wired) with download speed of at least 1.5 Mbps, 750 kbps upload. Software programs necessary to complete online class assignments Firewall modifications to allow for online course completion and allow for sending and receiving of documents from DOCJT's online learning management system. In addition, agencies' personnel will need functional and technical knowledge to allow them to take online learning events. This may require additional training for agency personnel.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Predicting estimated costs is largely unpredictable depending on whether an agency already possesses compatible equipment, infrastructure, and/or computer training. There are several cost factors that could be incurred to comply with the regulation. If figures are based on a full computer setup, the estimate for a computer setup is \$1,200 to include the hardware as well as any necessary software, local IT support, and a printer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Client travel costs associated with travel to Richmond or other training locations will be reduced (e.g., mileage, vehicle depreciation, per diems, lodging, etc.). In addition, this will allow agencies to have more options regarding scheduling their personnel for required training.

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

(a) Initially: \$521,100 (personnel cost and technology fee)

(b) On a continuing basis: approximately \$521,100 annually (personnel cost and technology fee)

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Law Enforcement Foundation Program Fund (KLEFPF).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fees. The regulation will require an additional \$521,100 for DOCJT staff and technology resources. \$212,400 for

2 additional staff members for online training who would not otherwise be needed, \$231,600 for blackboard based upon the estimated cost of additional users, and \$77,100 cost for classroom equipment and upgrades.

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Department of Criminal Justice Training, cities, counties, city and county law enforcement agencies, state law enforcement agencies, state university police departments, school district police departments, and special law enforcement officers.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.070

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

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

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

(c) How much will it cost to administer this program for the first year? The statute and regulation will require an additional \$521,100 for DOCJT staff and technology resources to implement the requirements set forth in 15A.070 and this administrative regulation. \$212,400 for 2 additional staff members for online training who would not otherwise be needed, \$231,600 for blackboard based upon the estimated cost of additional users, and \$77,100 cost for classroom equipment and upgrades. This regulation will provide positive impacts on affected agencies by lowering travel costs associated with traveling to Richmond or other training locations (e.g., mileage, vehicle depreciation, per diem, lodging, etc.). It will also allow agencies to have more options regarding scheduling their personnel for required training. It will possibly require some agencies to incur increased costs to meet online course requirements to include equipment, hardware, and modifications to their agencies firewall configurations. However, online classes are only one option for statutorily required training. Agencies not wishing to incur the potential costs will have several other options to receive their required training that are in a traditional face-to-face class.

(d) How much will it cost to administer this program for subsequent years? The statute and regulation will require an additional \$521,100 for DOCJT staff and technology resources to implement the requirements set forth in 15A.070 and this administrative regulation. \$212,400 for 2 additional staff members for online training who would not otherwise be needed, \$231,600 for blackboard based upon the estimated cost of additional users, and \$77,100 cost for classroom equipment and upgrades. See answer to (c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(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? For annual 40-hour in-service training, regulated entities who currently pay employees' per diem and motel expenses for training, are estimated \$380 per-person savings. However, this savings does not include the additional expenses of mileage and overtime travel costs that would be dependent on the length of travel for each entity.

For basic training, regulated entities do not currently pay for per diem or motel expenses for recruits, so their savings for mileage and overtime travel costs are unable to be determined, as it will vary based on the length of travel for each entity.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Subsequent savings of the quantifiable in-service expenses will be accumulated per-person, per-year for each regulated entity, in addition to the unquantifiable expenses of mileage and overtime travel costs. Similarly, basic training savings per regulated entity are unable to be calculated because of the variable travel distance per client.

(c) How much will it cost the regulated entities for the first year? In the initial year, regulated entities will be required to purchase laptop computers to include software and support for online training, estimated at \$1,200 per computer setup. This will be required for both basic training and in-service training. The total cost to regulated entities is variable based on the size of the department.

(d) How much will it cost the regulated entities for subsequent years? It is estimated that the lifespan of laptop computers purchased for online training will be approximately three years. Regulated entities should plan for the recurring cost of \$1,200 per purchased computer setup every three 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 change in the statute requiring online training and this administrative regulation together will cost the department over \$500,000.

#### JUSTICE AND PUBLIC SAFETY CABINET Department of Criminal Justice Training (New Administrative Regulation)

**503 KAR 7:010. On-site review of school security risk assessments and written approval of local board of education's noncompliance with KRS 158.4414(2).**

RELATES TO: KRS 158.441, 158.4410, 158.4414, 158.443, 702 KAR 1:180

STATUTORY AUTHORITY: KRS 158.4410

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.4410 requires the Office of the State School Security Marshal to monitor school safety and security initiatives, to conduct on-site reviews required for completion of the school security risk assessment tool incorporated by reference in 702 KAR 1:180, and to conduct school safety and security training. KRS 158.4414(2) requires a local board of education to obtain written approval from the State School Security Marshal if sufficient funds and qualified personnel are not available for assignment of a school resource officer to every campus in the district. KRS 15A.160 authorizes the secretary of the cabinet to adopt administrative regulations to administer the cabinet, and KRS 15A.070(5) authorizes the commissioner of the Department of Criminal Justice Training to promulgate administrative regulations. This administrative

regulation establishes requirements for conducting on-site reviews for completion of the school security risk assessment tool, monitoring school safety, and conducting related training. This administrative regulation also establishes the written approval process if sufficient funds and qualified personnel are not available for assignment of a school resource officer to every campus.

#### Section 1. Definitions.

(1) "Compliance officer" means the person assigned by the OSSSM to conduct an on-site review for risk assessment of a school campus.

(2) "Office of the State School Security Marshal" or "OSSSM" means the office established by KRS 158.4410(1) that is managed by the State School Security Marshal.

(3) "School campus" means all areas, including school buildings where instruction and school activities take place during the regular school day, and properties adjacent to such buildings, which are under the control of the school district and accessible to students during the school day, including the following:

(a) A single building located on real property owned or leased by a school district for instruction to students and school activities during the regular school day on a continuous basis, including extracurricular activities; or

(b) Two or more school buildings located on real property owned or leased by a school district to deliver instruction to students on a continuous basis or conduct extracurricular activities.

(4) "School resource officer" or "SRO" is defined by KRS 158.441(5).

(5) "School safety coordinator" or "SSC" means a district employee appointed by the local school district superintendent to serve as the school district's school safety coordinator and primary point of contact for public school safety and security functions.

(6) "School security risk assessment tool" means the assessment tool developed by the State School Security Marshal pursuant to KRS 158.4410(5), approved by the board for the Center for School Safety pursuant to KRS 158.443(9)(b), and incorporated by reference in 702 KAR 1:180.

(7) "State School Security Marshal" or "SSSM" means the person appointed by the commissioner of the Department of Criminal Justice Training pursuant to KRS 158.4410(3) who also acts as the manager of the OSSSM.

#### Section 2. OSSSM Review of Risk Assessment.

(1) The OSSSM shall assign a compliance officer to conduct an on-site review for risk assessment of the following:

(a) All school campuses of district operated schools on district owned or leased property under the administrative control of a principal or head teacher; and

(b) Any school campus of a district or state operated school on district owned or leased property with:

1. Career and technical education;
2. Special education program;
3. Preschool program; or
4. Alternative education program.

(2) The OSSSM shall consider the following factors in determining whether school buildings are a single school campus or multiple school campuses:

(a) Whether the buildings:

1. Are connected by a sidewalk or a parking lot;
2. Are within a reasonable walking distance of each other; or
3. Are not separated by a physical barrier, including a fence, wall, waterway, roadway, or other obstruction, that prevents ready access from one building to another; or

(b) Other indices that the buildings constitute a single school campus or multiple school campuses.

(3) The OSSSM shall maintain a list of school campuses based on subsections (1) and (2) of this section.

(4) If the school district disagrees with the designation of a school campus in its district, it may appeal the school campus decision to the OSSSM by sending a written objection with an explanation of why the buildings should be considered to be a single school campus or multiple school campuses to the OSSSM. The OSSSM:

(a) May request additional information from the school district;

(b) Shall consider the information provided by the school district;

(c) Shall make a determination concerning the school district objection; and

(d) Shall provide a written decision to the appropriate SSC.

(5) The OSSSM may conduct training on the school security risk assessment tool and the School Safety and Resiliency Act for:

- (a) Superintendents;
- (b) District school safety coordinators;
- (c) District-level school staff;
- (d) School resource officers; and
- (e) Other trainings as necessary to enhance school safety.

#### Section 3. On-site Review of the School Security Risk Assessment Tool.

(1) An OSSSM compliance officer shall conduct an on-site review for risk assessment of a school campus.

(2) The on-site review visit shall be:

- (a) Unannounced;
- (b) Conducted during the school day, but not be started within two (2) hours of the end of the school day.

(3) The compliance officer shall wear an issued or OSSSM approved uniform when conducting on site reviews.

(4) The compliance officer may stop the on-site review and assessment if the school does not cooperate with the on-site review and assessment process or circumvents the process. If the on-site review and assessment is stopped, the school campus shall be deemed out of compliance.

(5) After on-site review and assessment report completion, the report shall be emailed to the appropriate district SSC. If required by the district, the SSC shall be responsible for forwarding the assessment to other district personnel.

#### Section 4. Closed and Locked-door Exemption for Risk Assessment.

(1) Closed and locked-door exemption applications shall be completed onsite by the assigned compliance officer and forwarded to the State School Security Marshal for review.

(2) Exemption determinations shall be made on a case-by-case basis. The basis for an exemption shall include the following:

(a) A physical mechanism does not exist to secure the room. Examples may include a gymnasium with multiple doors or an open-air classroom;

(b) The room is used as a hallway, walkway, pathway, or easement to access another part of the building and a less restrictive alternative does not exist for access;

(c) Locking the door to the room would:

1. Violate an existing fire code;
2. Infringe upon an individual student's Individual Education Plan (IEP) if that student is physically present in the room; or
3. Violate the Americans with Disabilities Act (ADA); and
4. A less restrictive alternative for access is not available;

(d) Existing renovations or physical structure issues within the building make locking the doors to the room impracticable and a less restrictive alternative does not exist; or

(e) Other reasonable grounds exist to grant an exemption.

(3) Approved closed and locked-door exemptions shall be valid for the school year in which the exemption was granted and shall expire on the 30th day of June.

(4) On or before June 1 of each year, and prior to the expiration of an approved closed and locked-door exemption on June 30th, a new application for an exemption shall be completed if an exemption remains necessary for the upcoming school year.

(5) Closed and locked-door exemption applications shall be reviewed by the State School Security Marshal for approval or disapproval.

#### Section 5. Noncompliant School Campus.

(1) The OSSSM shall notify an SSC of the reasons for a finding of noncompliance.

(2) After being determined to be noncompliant, a school campus shall take steps to remediate the identified problems and notify the OSSSM upon completion of the remediation.

(3) A school campus determined to be noncompliant shall be

reassessed a minimum of one (1) time within the current school year using the school security risk assessment tool.

Section 6. SSSM Written Approval for Local Board of Education Noncompliance with Assignment of an SRO to Each Campus in the Local School District as Required Pursuant to KRS 158.4414(2).

(1) When sufficient funds and qualified personnel are not available to allow an SRO to be assigned to and working on-site full-time at each campus in a local school district, the local board of education shall request in writing for written approval from the SSSM permitting the district's noncompliance with KRS 158.4414(2).

(a) To receive written approval from the SSSM, the local board of education must aver, in writing, that sufficient funds and qualified personnel are not available to allow an SRO to be assigned to and working on-site full-time at each campus in the local school district.

(b) Upon receipt of a request for approval from a local board of education, the SSSM:

1. May request additional information or records from the local board of education;

2. Shall consider the local board of education's averment and other information, if any other information is requested by the SSSM;

3. Shall make a determination concerning the request; and

4. Shall provide a written approval or disapproval decision to the local board of education.

(2) The SSSM shall maintain a list of written approvals of requests granted pursuant to this section. The list shall be updated if the results of an on-site review of a risk assessment of a campus indicate an SRO has been assigned to and working on-site full-time at the campus.

#### Section 7. Commendation.

(1) The OSSSM may award a Certificate of Commendation to an individual, school, or district in recognition of an exemplary contribution to school safety within a school district or with statewide implications.

(2) A school or district may recommend an individual for this award by providing a written letter of recommendation to the OSSSM <mailto:>.

#### Section 8. Complaint Process.

(1) If the OSSSM receives a complaint regarding a school campus, OSSSM personnel, or other item related to the mission of the OSSSM, the process shall be as follows:

(a) An OSSSM supervisor shall review and require an investigation of the complaint; and

(b) The investigation shall be reviewed by the State School Security Marshal.

(2) After review by the State School Security Marshal:

(a) If the complaint is found to be substantiated and results in a school campus being out of compliance with KRS 158.4410(5) or KRS 158.162(3)(d), the OSSSM shall update the school's security risk assessment tool to reflect the school campus being out of compliance and notify the appropriate SSC; or

(b) If the complaint involves OSSSM personnel or other item related to the mission of the OSSSM, the State School Security Marshal shall send a written response to the complainant.

#### Section 9. Written submissions or notifications to the OSSSM.

A written submission or notification to the State School Security Marshal or OSSSM shall be made by sending the writing to:

(1) 4449 Kit Carson Drive, Richmond, Kentucky 40475; or

(2) [stateschoolmarshal@ky.gov](mailto:stateschoolmarshal@ky.gov).

NICOLAI JILEK, Commissioner

APPROVED BY AGENCY: August 30, 2022

FILED WITH LRC: September 14, 2022 at 12:15, 2022

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2022, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this

agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goens, Staff Attorney, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8216, fax (502) 564-6686, email [Justice.RegContact@ky.gov](mailto:Justice.RegContact@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goens

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes requirements and processes related to conducting on-site reviews for completion of the school security risk assessment tool, monitoring school safety, and conducting related training as mandated pursuant to KRS 158.441, 158.4410, 158.4414, and 158.443. It also establishes the process for a local board of education to request written approval from the State School Security Marshal if sufficient funds and qualified personnel are not available for a school resource officer to be assigned to and working on-site and full-time at every campus pursuant to KRS 158.4414(2).

(b) The necessity of this administrative regulation: This administrative regulation is needed to carry out the provisions of KRS 158.441, 158.4410, 158.4414, and 158.443.

(c) How this administrative regulation conforms to the content of the authorizing statutes: As authorized by KRS 15A.160, this administrative regulation sets forth the reasonable and necessary provisions to carry out the contents of KRS 158.441, 158.4410, 158.4414, and 158.443.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes requirements and processes related to conducting on-site reviews for completion of the school security risk assessment tool, monitoring school safety, and conducting related training as mandated pursuant to KRS 158.441, 158.4410, 158.4414, and 158.443. It also establishes the process for a local board of education to request written approval from the State School Security Marshal if sufficient funds and qualified personnel are not available for a school resource officer to be assigned to and working on-site and full-time at every campus pursuant to KRS 158.4414(2).

(2) If 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 to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment to an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment to an existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment to an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect approximately 1275 local, district-operated schools and staff in approximately 171 local school districts; approximately 1087 school campuses; and the Office of the State School Security Marshal and staff.

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

amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Local, district-operated schools and staff and OSSSM staff will have to take steps related to on-site risk assessment audits to determine schools' compliance with the school security risk assessment tool.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs associated with this administrative regulation include the time it takes to appeal the OSSSM's decision as to whether school buildings constitute a single or multiple campuses, request a closed and locked-door exemption for risk assessment, request written approval for local board of education's noncompliance with KRS 158.4414(2), and to communicate with the OSSSM regarding each. These acts should take the regulated entity no more than three (3) hours to complete.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this administrative regulation will enhance the safety of school students and staff.

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

(a) Initially: There is no initial cost to implement this administrative regulation as the requirements included are mandated by KRS 158.441, 158.4410, 158.4414, and 158.443.

(b) On a continuing basis: There are no ongoing costs to implement this administrative regulation as the requirements included are mandated by KRS 158.441, 158.4410, 158.4414, and 158.443.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding for the implementation of this administrative regulation is provided from the Kentucky Law Enforcement Foundation Program 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: An increase in fees or funding is not anticipated to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

#### FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The administrative regulation will impact local boards of education and district-operated school campuses and the Office of the State School Security Marshal.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.160, KRS 15A.070(4), KRS 158.4410.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 associated with administering this program for the first year as the requirements included with the

administrative regulation are statutorily mandated by KRS 158.441, 158.4410, 158.4414, and 158.443.

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with administering this program for subsequent years as the requirements included with the administrative regulation are statutorily mandated by KRS 158.441, 158.4410, 158.4414, and 158.443.

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

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation:

(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 administrative regulation is not anticipated to generate any cost savings for the regulated entities for the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The administrative regulation is not anticipated to generate any cost savings for the regulated entities for subsequent years.

(c) How much will it cost the regulated entities for the first year? There are no anticipated first-year costs for regulated entities related to this administrative regulation as the requirements included within the administrative regulation are statutorily mandated by KRS 158.441, 158.4410, 158.4414, and 158.443.

(d) How much will it cost the regulated entities for subsequent years? There are no anticipated costs for subsequent years for regulated entities related to this administrative regulation as the requirements included within the administrative regulation are statutorily mandated by KRS 158.441, 158.4410, 158.4414, and 158.443.

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 is not anticipated to have a major economic impact as all requirements included with the regulation are statutorily mandated by KRS 158.441, 158.4410, 158.4414, and 158.443.

## **ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE**

### **Minutes of September 13, 2022**

#### **Call to Order and Roll Call**

The September meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, September 13, 2022 at 1 p.m. in Room 149 of the Capitol Annex. Representative Hale, Co-Chair, called the meeting to order, the roll call was taken.

#### **Present were:**

**Members:** Senator Stephen West, Co-Chair; Representative David Hale, Co-Chair; Senators Ralph Alvarado and David Yates; and Representatives Randy Bridges, MaryLou Marzian, and Deanna Frazier Gordon.

**LRC Staff:** Stacy Auterson, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, Carrie Nichols, and Christy Young.

**Guests:** Cassie Trueblood, Education Professional Standards Board; Cary Bishop, Ashley Dailey, Finance and Administration Cabinet; Chris Harlow, Board of Pharmacy; Jeff Allen, Board of Dentistry; Julie Campbell, Board of Cosmetology; Eddie Sloan, John Wood, Board of Emergency Medical Services; Steven Fields, Jenny Gilbert, Department of Fish and Wildlife Resources; Clint Quarles, Department of Agriculture; Bradley Arterburn, Amy Baker, Department of State Police; Kyle Ray, Ricky Sizemore, Department of Highways; Bruce Roberts, Jeremy Rodgers, John Wood, Kentucky Fire Commission; Oran "Scotty" McFarlan, Education and Labor Cabinet; Misty Edwards, Kentucky Commission on Proprietary Education; Dale Hamblin, Scott Wilhoit, Department of Workers' Claims; Abigail Gall, Shawn Orme, Department of Insurance; Jonathan "Max" Fuller, Rick Rand, Department of Housing, Buildings and Construction; Julie Brooks, Department for Public Health; Jonathan Scott, Department for Medicaid Services.

#### **The Administrative Regulation Review Subcommittee met on Tuesday, September 13, 2022, and submits this report:**

#### **Administrative Regulations Reviewed by this Subcommittee:**

##### **EDUCATION AND LABOR CABINET: Education Professional Standards Board: Alternative Routes to Certification**

016 KAR 009:110E. Expedited route to certification. Cassie Trueblood, counsel, represented the board.

##### **FINANCE AND ADMINISTRATION CABINET: Commonwealth Office of Technology: General Administration**

200 KAR 001:016. Data Breach Notification Forms. Cary Bishop, assistant general counsel, and Ashley Daily, staff attorney, represented the office.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs, Sections 1 and 2, and the material incorporated by reference to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

##### **BOARDS AND COMMISSIONS: Board of Pharmacy**

201 KAR 002:015. Continuing education. Christopher Harlow, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 5, 6, and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 002:413E. Ordering and administering vaccinations.

In response to questions by Senator Alvarado, Mr. Harlow stated that this administrative regulation allowed pharmacists to administer childhood vaccinations; such as vaccinations against measles, mumps, and rubella; to children three (3) years of age and older. Patients provided the pharmacists with pediatric-care provider information, which may result in notification to the provider regarding the vaccination in order to prevent duplication of vaccination.

##### **Board of Dentistry**

201 KAR 008:550. Anesthesia and sedation related to dentistry. Jeff Allen, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 3 through 6, and 16 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

##### **Board of Cosmetology**

201 KAR 012:030E. Licensing and examinations. Julie Campbell, executive director, represented the board.

201 KAR 012:060E. Inspections.

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

201 KAR 012:230E. Code of ethics.

201 KAR 012:260E. Fees.

201 KAR 012:290E. Permits.

##### **KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM: Board of Emergency Medical Services**

202 KAR 007:701E. Scope of practice matters. Eddie Sloan, interim executive director, and John Wood, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend Section 11 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

##### **TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Game**

301 KAR 002:090. Means by which migratory game birds may be taken. Steven Fields, staff attorney, and Jenny Gilbert, legislative liaison, represented the department.

In response to a question by Co-Chair Hale, Ms. Gilbert stated that there were not many hunters who used archery to hunt migratory birds.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 002:095. Importation, possession, and transportation of wildlife meat carcasses, and parts.

In response to a question by Co-Chair West, Ms. Gilbert stated that surveillance for Chronic Wasting Disease (CWD) had been performed in five (5) western Kentucky counties, and there had not been any specimen that tested positive for CWD. The

department was continuing to monitor other areas and considering other ways to track CWD.

In response to a question by Representative Frazier Gordon, Mr. Fields stated that requirements pertained to carcasses in sealed containers. There were Commerce Clause concerns if the requirements were stricter. Ms. Gilbert stated that container requirements were very specific, and the department was working to make the public aware of the requirements. Because sportsmen were equally concerned about CWD, the department had experienced good compliance.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 002:300. Black bear seasons and requirements.

In response to questions by Representative Marzian, Ms. Gilbert stated that the bear seasons varied and were posted on the department's Web site. Mr. Fields stated that, previously, a bear season ended when the quota had been reached. This change provided a more traditional season that would not end based on a quota and would allow hunters to better plan for hunting trip durations. Co-Chair Hale stated that, in the past, there had been sportsmen who did not know to call to determine if the quota had been met.

#### **GENERAL GOVERNMENT CABINET: Department of Agriculture: Pesticides**

302 KAR 026:010. Definitions. Clint Quarles, counsel, represented the department.

302 KAR 026:020. Pesticide certification and licensing.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 7 and 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 026:030. Recordkeeping.

A motion was made and seconded to approve the following amendments: to amend the TITLE; 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.

302 KAR 026:040. Storage and handling of pesticides.

302 KAR 026:050. Trainee registration and supervision requirements.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Sections 3 through 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 026:060. Identification of service vehicles.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Section 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 026: 070. Non-certified applicator training and supervision.

A motion was made and seconded to approve the following amendments: (1) to add a definition section; and (2) to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Sections 2 through 7 to comply with the drafting and formatting

requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 026:080. Lawn, turf, ornamental and interior landscape notice posting.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Sections 1, 2, 4, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 026:090. Wood destroying organism treatments an integrated pest management in schools.

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.

302 KAR 026:100. Structural pest control settlement proceedings.

302 KAR 026:150. Penalties.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Sections 1 through 3 and 6 through 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Regulation and Inspection; Motor Fuel**

302 KAR 079:009. Repeal of 302 KAR 079:010.

#### **JUSTICE AND PUBLIC SAFETY CABINET: Department of State Police: Concealed Deadly Weapons**

502 KAR 011:010. Application for license to carry concealed deadly weapon. Bradley Arterburn, commander, and Amy Barker, assistant general counsel, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 6, 8, 10, and 13 and the license application to include additional statutory requirements; and (2) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2, 4, 6, 8, 10, 12, and 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.

502 KAR 011:060. License denial and reconsideration process.

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 4 to comply with the drafting and formatting requirements of KRS Chapter 13. Without objection, and with agreement of the agency, the amendments were approved.

502 KAR 011:070. License revocation and suspension notice and reinstatement process.

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 and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

503 KAR 001:140E. Peace officer, telecommunicator, and court security officer professional standards.



**TRANSPORTATION CABINET: Department of Highways: Traffic**  
603 KAR 005:155. Vegetation management. Kyle Ray, assistant general counsel, and Ricky Sizemore, branch manager, represented the department.

**KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM:  
Kentucky Fire Commission: Commission on Fire Protection  
Personnel Standards and Education**

739 KAR 002:070. Volunteer fire department loan fund. Bruce Roberts, deputy executive director; Jeremy Rodgers, director of operations; and John Wood, counsel, represented the commission.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 2, 4 through 7, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Sections 5 through 7 to delete references to "or seventy-five (75) percent", for consistency with the change of the maximum loan amount to \$125,000; and (3) to amend Section 10 to revise incorporated material. Without objection, and with agreement of the agency, the amendments were approved.

**EDUCATION AND LABOR CABINET: Department of Workforce  
Investment: Employment Services**

787 KAR 002:040. Local workforce development area governance. Oran McFarlan, deputy general counsel, represented the department.

In response to a question by Co-Chair West, Mr. McFarlan stated that the department had developed this agency amendment in conjunction with Senator Jimmy Higdon, to address his concerns from the July 2022 meeting of this subcommittee.

At the July 14, 2022, meeting of this subcommittee, a motion was made and seconded to approve the following amendments: (1) to add a definition section; and (2) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 through 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Section 8 to clarify that this administrative regulation shall not prohibit coordination between the Kentucky Workforce Innovation Board and the Kentucky Education Workforce Collaborative. Without objection, and with agreement of the agency, the amendments were approved.

**Kentucky Commission on Proprietary Education**

791 KAR 001:010. Applications, permits, and renewals. Misty Edwards, executive director, and Adrian Jacob, staff attorney, represented the commission.

A motion was made and seconded to approve the following amendments: to amend Sections 11 and 12 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

791 KAR 001:020. Standards for licensure.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

791 KAR 001:025. Fees.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 2 and 12 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

791 KAR 001:027. School record keeping requirements.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 2 to comply with the drafting requirements of KRS Chapter

13A. Without objection, and with agreement of the agency, the amendments were approved.

791 KAR 001:030. Procedures for hearings.

A motion was made and seconded to approve the following amendments: to amend Section 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

791 KAR 001:035. Student protection fund.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

791 KAR 001:040. Commercial driver license training school curriculum and refresher course.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A; and (2) to delete Section 4. Without objection, and with agreement of the agency, the amendments were approved.

791 KAR 001:050. Application for license for commercial driver license training school.

A motion was made and seconded to approve the following amendments: to amend Section 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

791 KAR 001:060. Application for renewal of license for commercial driver license training school.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 2, 4, and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

791 KAR 001:070. Commercial driver license training school instructor and agency application and renewal procedures.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 3, and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

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 Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

791 KAR 001:100. Standards for Kentucky resident commercial driver training school facilities.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A; and (2) to delete Section 4. Without objection, and with agreement of the agency, the amendments were approved.

791 KAR 001:150. Bond requirements for agents and schools.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 2, and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.



791 KAR 001:155. School closing process.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and 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.

791 KAR 001:160. Transfer of ownership, change of location, change of name, revision of existing programs.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Sections 1 through 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Department of Workers' Claims**

803 KAR 025:089E. Workers' compensation medical fee schedule for physicians. Dale Hamblin, assistant general counsel, and Scott Wilhoit, commissioner, represented the department.

A motion was made and seconded to approve the following amendment: to amend Section 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

803 KAR 025:195. Utilization review, appeal of utilization review decisions and medical bill audit.

In response to questions by Co-Chair West, Mr. Hamblin stated that a preauthorization request went through the utilization review process. An initial reviewer, if not a physician, could approve a request; however, only a physician could deny a preauthorization request. If the preauthorization request was denied, the requesting physician could ask for reconsideration. A second reviewer would then consider the request. The second reviewer was required to be of the same qualifications as the requesting physician. The requesting physician could also request a peer-to-peer conference to take place at a specific date and time. If the peer-to-peer conference failed to result in an agreement, the petitioner could then have a judge consider a medical fee dispute. The process prior to this administrative regulation, as established in 803 KAR 15:190; which was found null, void, and unenforceable; included some decisions being made by a medical director. The peer-to-peer conference in this administrative regulation was an alternative option for the second review. Mr. Wilhoit stated that the purpose of the peer-to-peer option was to foster communication and hopefully expedite a resolution.

In response to a question by Senator Yates, Mr. Hamblin stated that, if the peer-to-peer conference was scheduled and not completed on the part of the reviewer, except in cases of good cause, the request was automatically approved.

Co-Chair Hale thanked the department for developing an agency amendment to address concerns.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3 through 5, and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 7 to clarify that written notice of denial requirements apply to preauthorization requests. Without objection, and with agreement of the agency, the amendments were approved.

#### **PUBLIC PROTECTION CABINET: Department of Insurance: Agents, Consultants, Solicitors and Adjusters**

806 KAR 009:025. Licensing process. Abigail Gall, executive advisor, and Shawn Orme, executive advisor, represented the department.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 6 and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Health Insurance Contracts**

806 KAR 017:585. Annual report mental health parity nonquantitative treatment limitation compliance.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and the NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Department of Housing, Buildings and Construction: Kentucky Building Code**

815 KAR 007:120. Kentucky Building Code. Max Fuller, deputy commissioner, and Rick Rand, commissioner, represented the department.

#### **Heating, Ventilation, and Air Conditioning Licensing Requirements**

815 KAR 008:010. Licensing requirements for master HVAC contractors and journeyman HVAC mechanics.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, and 5 through 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Standards of Safety**

815 KAR 010:060. Kentucky standards of safety.

#### **CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Local Health Departments**

902 KAR 008:120. Leave provisions applicable to employees of local health departments. Julie Brooks, regulation coordinator, represented the department.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 4 through 6, 8, and 11 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

907 KAR 001:065E. Payments for price-based nursing facility services. Jonathan Scott, regulatory and legislative advisor, represented the department.

In response to questions by Co-Chair West, Mr. Scott stated that the twenty-nine (29) dollar fee would be added into the annual rate paid to nursing homes on an ongoing basis, based on the 2021 budget.

#### **Outpatient Pharmacy Program**

907 KAR 023:020. Reimbursement for outpatient drugs.

In response to questions by Senator Alvarado, Mr. Scott stated that reimbursement for medically assisted treatment medications that met the standard of care would be the same, whether billed as a professional service fee or professional dispensing fee.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 6, and 9 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Department for Community Based Services: Child Support**

921 KAR 001:380. Child support enforcement program application and intergovernmental process. Jonathan Scott, regulatory and legislative advisor, represented the department.

**The following administrative regulations were deferred or removed from the September 13, 2022, subcommittee agenda:**

**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.

031 KAR 003:031. Voting precinct and address of overseas voter whose last place of residence is in the Commonwealth is no longer a recognized residential address.

**Forms and Procedures**

031 KAR 004:071E. Recanvas procedures.

031 KAR 004:071. Recanvas procedures.

031 KAR 004:131E. Delivery and return of absentee ballots transmitted to covered voters via facsimile or electronically.

031 KAR 004:131. Delivery and return of absentee ballots transmitted to covered voters via facsimile or electronically.

031 KAR 004:141E. Submission of the federal postcard application via electronic mail.

031 KAR 004:141. Submission of the federal postcard application via electronic mail.

031 KAR 004:170. Exceptions to prohibition on electioneering.

031 KAR 004:196E. Consolidation of precincts and precinct election officers.

031 KAR 004:196. Consolidation of precincts and precinct election officers.

031 KAR 004:201E. Chain of custody for records during an election contest.

031 KAR 004:201. Chain of custody for records during an election contest.

031 KAR 004:210E. Establishment of risk-limiting audit pilot program.

031 KAR 004:210. Establishment of risk-limiting audit pilot program.

**Voting**

031 KAR 005:011E. Use of the federal writ-in absentee ballot.

031 KAR 005:011. Use of the federal writ-in absentee ballot.

031 KAR 005:026E. Ballot standards and election security.

031 KAR 005:026. Ballot standards and election security.

**FINANCE AND ADMINISTRATION CABINET: Kentucky Retirement Systems: General Rules**

105 KAR 001:415E. Reimbursement of hospital and medical insurance premiums for Medicare eligible retired members reemployed with a participating employer.

**GENERAL GOVERNMENT CABINET: Department of Military Affairs: Disaster and Emergency Services**

106 KAR 001:141. Emergency management funding.

106 KAR 001:171. Local emergency management agency program quarterly report.

106 KAR 001:181. Project application.

106 KAR 001:191. Project application reimbursement.

106 KAR 001:201. Local plan.

106 KAR 001:211. Local emergency management training.

106 KAR 001:221. Local exercise.

106 KAR 001:231. Local emergency management agency ordinance requirement.

106 KAR 001:241. Local emergency management director appointment process.

106 KAR 001:251. Workers' Compensation Enrollment Form.

106 KAR 001:261. Supplementary state fund expense reimbursement eligibility list.

106 KAR 001:291. Specialized rescue squad alternative affiliation agreement process.

106 KAR 001:341. Rescue aid fund allocation.

106 KAR 001:371. Rescue aid fund expenditure documentation.

**Military Assistance Trust Funds**

106 KAR 002:021. Military Family Assistance Trust Fund.

106 KAR 002:031. National Guard Adoption Benefits Program.

**FINANCE AND ADMINISTRATION CABINET: Commonwealth Office of Technology: Kentucky Infrastructure Authority**

200 KAR 017:111E. Guidelines for Kentucky Infrastructure Authority drinking water and wastewater grant program.

**BOARDS AND COMMISSIONS: Board of Licensure for Long-Term Care Administrators**

201 KAR 006:060. Fees.

**Board of Dentistry**

201 KAR 008:520. Fees and fines.

**Real Estate Commission**

201 KAR 011:121. Standards of professional conduct.

**Board of Cosmetology**

201 KAR 012:190E. Complaint and disciplinary process.

**TOURISM, ARTS AND HERITAGE CABINET: Heritage Council**

300 KAR 006:011. Historic rehabilitation tax credit certifications.

**Department of Fish and Wildlife Resources: Game**

301 KAR 002:142. Spring turkey hunting.

**JUSTICE AND PUBLIC SAFETY CABINET: Department of State Police: 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 LABOR CABINET: Department of Education: Office of Instruction**

704 KAR 003:305. Minimum requirements for high school graduation.

**Department of Workplace Standards: Labor Standards; Wages and Hours**

803 KAR 001:090. Workers with disabilities and work activity centers' employee's wages.

**PUBLIC PROTECTION CABINET: Department of Insurance: Insurance Holding Company Systems**

806 KAR 037:010. Insurance holding company systems.

**Department of Charitable Gaming: PUBLIC PROTECTION CABINET: Charitable Gaming**

820 KAR 001:001. Definitions.

820 KAR 001:032. Pulltabs.

**CABINET FOR HEALTH AND FAMILY SERVICES: Office of Human Resource Management: Administration**

900 KAR 001:050. Child and adult protection employees subject to state and national criminal background checks.

**Office of Health Data and Analytics: Kentucky Health Benefit Exchange**

900 KAR 010:120. KHBE eligibility and enrollment in qualified health plan, SHOP, and SHOP formal resolution process.

**Department for Public Health: Vital Statistics**

901 KAR 005:120E. Abortion reporting.

**Communicable Diseases**

902 KAR 002:020. Reportable disease surveillance.

**Department for Medicaid Services**

907 KAR 001:008. Ambulatory surgical center services and reimbursement.

907 KAR 001:044. Coverage provisions and requirements regarding community mental health center behavioral health services.

907 KAR 001:082. Coverage provisions and requirements regarding rural health clinic services.

907 KAR 001:104. Reimbursement for advanced practice registered nurse services.

**Department for Community Based Services: Child Welfare**

922 KAR 001:290. Background checks for private child-caring or child-placing staff members.

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

**Daycare**

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

**The subcommittee adjourned at 1:55 p.m. The next meeting of this subcommittee was tentatively scheduled for October 11, 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 STATE GOVERNMENT Meeting of September 27, 2022**

The Interim Joint Committee on State Government met on September 27, 2022, and a quorum was present. The following administrative regulations were available for consideration, having been referred to the Committee on August 3, 2022, and September 7, 2022, pursuant to KRS 13A.290(6):

101 KAR 2:046  
101 KAR 2:066  
101 KAR 2:095 Emergency  
101 KAR 2:095  
101 KAR 2:102  
101 KAR 2:190  
101 KAR 3:015  
101 KAR 6:020 Emergency  
101 KAR 6:020  
105 KAR 1:390

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(8) and 13A.030(2):

none

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

none

The following administrative regulations were deferred pursuant to KRS 13A.300:

none

Committee activity in regard to review of the above-referenced administrative regulation is reflected in the minutes of the September 27, 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 49<sup>th</sup> year of the *Administrative Register of Kentucky*, from July 2022 through June 2023.

### Locator Index - Effective Dates

D - 2

Lists all administrative regulations published or continuing through the KRS Chapter 13A review process during this Register year. It also lists the page number on which each regulation is published, the effective date of the regulation after it has completed the review process, and other actions that may affect the regulation.

NOTE: Regulations listed with a "47 Ky.R." or "48 Ky.R." notation are regulations that were originally published in previous years' issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the last Register year ended.

### KRS Index

D - 11

A cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each regulation submitted for publication during this Register year.

### Certifications Index

D - 17

A list of administrative regulations for which certification letters have been filed pursuant to KRS 13A.3104 during this Register year.

### Technical Amendment Index

D - 18

A list of administrative regulations that have had technical, non-substantive amendments made during this Register year. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.2255(2), 13A.312(2), or 13A.320(1)(d). Because these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the *Administrative Register of Kentucky*; however, they are usually available for a short time on the Legislative Research Commission's Web site.

### Subject Index

D - 19

A general index of administrative regulations published during this Register year, and is mainly broken down by agency.

## LOCATOR INDEX - EFFECTIVE DATES

Administrative regulations published in previous Register years may appear in this index if a regulation had not completed the KRS Chapter 13A review process by the beginning of *Register* year 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 prior Registers, 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.

### EMERGENCY ADMINISTRATIVE REGULATIONS

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Regulation Number	Ky.R. Page No.	Effective Date	Regulation Number	Ky.R. Page No.	Effective Date
201 KAR 012:030E	49 Ky.R. 253	7-12-2022	201 KAR 012:060E	49 Ky.R. 257	7-12-2022
201 KAR 012:082E	49 Ky.R. 259	7-12-2022	201 KAR 012:190E	49 Ky.R. 264	7-12-2022
201 KAR 012:230E	49 Ky.R. 266	7-12-2022	201 KAR 012:260E	49 Ky.R. 267	7-12-2022
201 KAR 012:290E	49 Ky.R. 269	7-12-2022	201 KAR 015:030E	48 Ky.R. 2689	4-7-2022
201 KAR 015:040E	48 Ky.R. 2692	4-7-2022	201 KAR 015:050E	48 Ky.R. 2693	4-7-2022
201 KAR 015:110E	48 Ky.R. 2697	4-7-2022	201 KAR 015:125E	48 Ky.R. 2700	4-7-2022
201 KAR 020:070E	48 Ky.R. 2702	4-6-2022	As Amended	49 Ky.R. 14	6-17-2022
201 KAR 020:260E	48 Ky.R. 2168	1-11-2022	Amended	2948	5-10-2022
201 KAR 020:480E	48 Ky.R. 2367	2-2-2022	Amended	2951	5-10-2022
Replaced	2959	7-20-2022	201 KAR 046:020E	48 Ky.R. 2172	12-21-2021
202 KAR 007:545E	48 Ky.R. 2704	3-30-2022	202 KAR 007:560E	48 Ky.R. 2926	5-3-2022
202 KAR 007:701E	49 Ky.R. 272	7-12-2022	As Amended	751	
300 KAR 001:020E	49 Ky.R. 525	7-25-2022	Withdrawn		8-25-2022
300 KAR 001:021E	49 Ky.R. 727	8-25-2022	300 KAR 006:011E	48 Ky.R. 2929	4-29-2022
503 KAR 001:140E	49 Ky.R. 277	7-13-2022	503 KAR 003:130E	49 Ky.R. 732	8-18-2022
601 KAR 002:233E	47 Ky.R. 2335	4-12-2021	Replaced	48 Ky.R. 429	11-30-2021
603 KAR 010:011E	48 Ky.R. 736	7-30-2021	702 KAR 001:192E	48 Ky.R. 1999	12-8-2021
Am Comments	2374	2-11-2022	As Amended		3-7-2022
787 KAR 001:360E	48 Ky.R. 2937	4-28-2022	800 KAR 001:020E	48 Ky.R. 2174	12-17-2021
803 KAR 002:182E(r)	47 Ky.R. 2531	5-13-2021	Am Comments	2554	3-15-2022
803 KAR 002:321E	48 Ky.R. 2001	11-23-2021	803 KAR 002:330E	48 Ky.R. 753	7-20-2021
Replaced	2141	7-5-2022	803 KAR 002:426E	48 Ky.R. 2003	11-23-2021
803 KAR 002:330E	48 Ky.R. 753	7-20-2021	Replaced	2143	7-5-2022
803 KAR 025:089E	49 Ky.R. 284	6-24-2022	As Amended	754	
803 KAR 025:195E	48 Ky.R. 2710	4-15-2022	Am Comments	49 Ky.R. 15	
803 KAR 025:305E	48 Ky.R. 1473	9-28-2021	Expired		6-25-2022
807 KAR 005:001E	49 Ky.R. 734	9-14-2022	900 KAR 005:020E	48 Ky.R. 2368	1-27-2022
Am Comments	2715	4-15-2022	As Amended	49 Ky.R. 306	
As Amended	347	8-25-2022	Replaced		
900 KAR 006:075E	48 Ky.R. 2370	1-27-2022	Am Comments	2716	4-15-2022
As Amended	49 Ky.R. 306		Replaced	347	8-25-2022
900 KAR 012:005E	49 Ky.R. 530	8-8-2022	900 KAR 014:010E	48 Ky.R. 2548	2-21-2022
As Amended	2556	3-7-2022			
016 KAR 009:011E	49 Ky.R. 240	7-13-2022			
031 KAR 002:030E	49 Ky.R. 718	9-1-2022			
031 KAR 003:031E	48 Ky.R. 2902	4-28-2022			
031 KAR 004:071E	48 Ky.R. 2904	4-28-2022			
031 KAR 004:131E	48 Ky.R. 2906	4-28-2022			
031 KAR 004:141E	48 Ky.R. 2909	4-28-2022			
031 KAR 004:195E	48 Ky.R. 256	6-23-2021			
031 KAR 004:196E	48 Ky.R. 2911	4-28-2022			
031 KAR 004:200E	48 Ky.R. 258	6-23-2021			
031 KAR 004:201E	48 Ky.R. 2913	4-28-2022			
031 KAR 004:210E	48 Ky.R. 2914	4-28-2022			
031 KAR 005:011E	48 Ky.R. 2916	4-28-2022			
031 KAR 005:025E	48 Ky.R. 259	6-23-2021			
031 KAR 005:026E	48 Ky.R. 2918	4-28-2022			
101 KAR 002:095E	48 Ky.R. 2684	4-15-2022			
Replaced	2795	9-27-2022			
101 KAR 002:210E	49 Ky.R. 719	9-15-2022			
101 KAR 006:020E	48 Ky.R. 2687	4-15-2022			
Replaced	2878	9-27-2022			
102 KAR 001:360E	48 Ky.R. 2167	12-28-2021			
103 KAR 043:340E	49 Ky.R. 6	6-2-2022			
105 KAR 001:415E	49 Ky.R. 243	6-28-2022			
Am Comments	748				
105 KAR 001:450E	48 Ky.R. 2921	5-5-2022			
Withdrawn	#	8-15-2022			
105 KAR 001:451E	49 Ky.R. 722	8-19-2022			
200 KAR 017:110E	48 Ky.R. 5	6-2-2021			
As Amended	1098	9-14-2021			
Expired		2-27-2022			
200 KAR 017:111E	49 Ky.R. 247	6-21-2022			
201 KAR 002:106E	48 Ky.R. 1997	12-14-2021			
Replaced	2116	6-2-2022			
201 KAR 002:380E	49 Ky.R. 523	8-8-2022			
201 KAR 002:412E	48 Ky.R. 1466	10-11-2021			
Withdrawn		6-27-2022			
201 KAR 002:413E	49 Ky.R. 250	6-27-2022			

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
Am Comments	48 Ky.R. 2952		101 KAR 002:066		
As Amended	49 Ky.R. 308		Amended	48 Ky.R. 2792	9-27-2022
Replaced		8-25-2022	101 KAR 002:095		
901 KAR 005:120E	49 Ky.R. 286	6-30-2022	Amended	48 Ky.R. 2795	9-27-2022
Am Comments	755		101 KAR 002:102	48 Ky.R. 2797	
902 KAR 002:020E	48 Ky.R. 2939	4-26-2022	As Amended	49 Ky.R. 549	9-27-2022
902 KAR 002:230E	48 Ky.R. 1474	10-1-2021	101 KAR 002:190		
Expired		6-28-2022	Amended	48 Ky.R. 2802	9-27-2022
902 KAR 002:240E	48 Ky.R. 1476	10-1-2021	101 KAR 002:210		
As Amended	2014	12-9-2021	Amended	49 Ky.R. 857	
Expired		6-28-2022	101 KAR 003:015	48 Ky.R. 2805	
902 KAR 002:250E	48 Ky.R. 1477	10-1-2021	As Amended	49 Ky.R. 553	9-27-2022
Expired		6-28-2022	101 KAR 006:020	48 Ky.R. 2878	9-27-2022
907 KAR 001:065E	49 Ky.R. 288	7-1-2022	105 KAR 001:390		
907 KAR 004:020E	49 Ky.R. 532	7-19-2022	Amended	48 Ky.R. 2811	9-27-2022
907 KAR 004:030E	49 Ky.R. 535	7-19-2022	As Amended	49 Ky.R. 317	
907 KAR 020:020E	49 Ky.R. 538	7-19-2022	105 KAR 001:415	49 Ky.R. 485	
907 KAR 020:100E	49 Ky.R. 542	7-19-2022	105 KAR 001:450	48 Ky.R. 3125	
907 KAR 023:020E	49 Ky.R. 9	6-1-2022	Withdrawn	*	8-15-2022
908 KAR 003:010E	48 Ky.R. 2550	2-21-2022	105 KAR 001:451	49 Ky.R. 938	
Replaced	49 Ky.R. 370	8-25-2022	106 KAR 001:141	49 Ky.R. 161	
921 KAR 004:122E	48 Ky.R. 2005	12-1-2021	106 KAR 001:171	49 Ky.R. 163	
Replaced	2146	6-2-2022	106 KAR 001:181	49 Ky.R. 165	
922 KAR 001:360E	48 Ky.R. 2176	12-28-2021	106 KAR 001:191	49 Ky.R. 166	
Replaced	3014	7-20-2022	106 KAR 001:201	49 Ky.R. 168	
922 KAR 002:260E	49 Ky.R. 296	7-1-2022	106 KAR 001:211	49 Ky.R. 170	
<hr/>			106 KAR 001:221	49 Ky.R. 173	
<b>ORDINARY ADMINISTRATIVE REGULATIONS</b>			106 KAR 001:231	49 Ky.R. 176	
009 KAR 001:070	48 Ky.R. 2529		106 KAR 001:241	49 Ky.R. 177	
As Amended	2955	7-19-2022	106 KAR 001:251	49 Ky.R. 179	
011 KAR 004:080			106 KAR 001:261	49 Ky.R. 181	
Amended	48 Ky.R. 2779		106 KAR 001:291	49 Ky.R. 182	
As Amended	49 Ky.R. 309		106 KAR 001:341	49 Ky.R. 184	
011 KAR 005:145			106 KAR 001:371	49 Ky.R. 185	
Amended	48 Ky.R. 2781		106 KAR 002:021	49 Ky.R. 186	
As Amended	49 Ky.R. 309		106 KAR 002:031	49 Ky.R. 188	
011 KAR 015:090			200 KAR 001:016	49 Ky.R. 190	
Amended	48 Ky.R. 2783		As Amended	758	
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011 KAR 016:020			200 KAR 041:010	49 Ky.R. 943	
Amended	48 Ky.R. 2788		201 KAR 001:100		
As Amended	49 Ky.R. 314		Amended	47 Ky.R. 1816	
011 KAR 022:010	48 Ky.R. 2875		As Amended	2575	
As Amended	49 Ky.R. 315		201 KAR 001:190		
011 KAR 023:010	48 Ky.R. 2877		Amended	48 Ky.R. 2112	
As Amended	49 Ky.R. 316		As Amended	2558	7-5-2022
013 KAR 003:050			201 KAR 002:015		
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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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	910 KAR 001:090		301 KAR 002:082
205.900-205.925	910 KAR 001:090	258.085	301 KAR 002:081
205.990	921 KAR 001:400		301 KAR 002:082
205.992	921 KAR 001:380	271B	922 KAR 001:300
206.10	921 KAR 002:035	273.161	922 KAR 001:300
210.370-210.485	907 KAR 003:010	278.010	807 KAR 005:001E
211.090	902 KAR 021:040	278.020	807 KAR 005:001E
211.1751	902 KAR 008:160	278.100	807 KAR 005:001E
211.180	902 KAR 021:040	278.180	807 KAR 005:001E
211.332	900 KAR 012:005	278.300	807 KAR 005:001E
211.350-211.380	922 KAR 001:300	278.410	807 KAR 005:001E
211.461-211.466	907 KAR 004:030	281.010	907 KAR 004:030
212.230	902 KAR 008:160	304	900 KAR 010:120
212.240	902 KAR 008:160	304.1-050	806 KAR 037:010
212.245	902 KAR 008:160	304.14-110	900 KAR 010:120
212.890	902 KAR 008:160	304.17A-005	900 KAR 012:005

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	907 KAR 004:020	315.020	201 KAR 002:413E
	907 KAR 004:030	315.025	201 KAR 002:450
304.17A-138	900 KAR 012:005	315.030	201 KAR 002:450
304.17A-243	900 KAR 010:120	315.0351	201 KAR 002:450
304.17A-245	900 KAR 010:120		201 KAR 002:460
304.17B-021	806 KAR 017:351	315.050	201 KAR 002:030
304.17B-023	806 KAR 017:351		201 KAR 002:413E
304.24-390	806 KAR 037:010	315.065	201 KAR 002:413E
304.24-400	806 KAR 037:010	315.121	201 KAR 002:450
304.24-415	806 KAR 037:010	315.131	201 KAR 002:450
304.33	806 KAR 037:010	315.135	201 KAR 002:413E
304.37-010	806 KAR 037:010	315.191	201 KAR 002:030
304.37-020	806 KAR 037:010		201 KAR 002:380
304.37-030	806 KAR 037:010		201 KAR 002:460
304.37-110	806 KAR 037:010	315.205	201 KAR 002:413E
304.37-120	806 KAR 037:010	315.210	201 KAR 002:030
304.37-130	806 KAR 037:010	317A.020	201 KAR 012:030
304.39-060	806 KAR 039:030		201 KAR 012:082
304.4-010	806 KAR 009:025		201 KAR 012:290
304.40-320	900 KAR 012:005	317A.050	201 KAR 012:030
304.5-040	907 KAR 004:020		201 KAR 012:082
	907 KAR 004:030		201 KAR 012:260
304.6	806 KAR 037:010		201 KAR 012:290
304.9-030	806 KAR 009:025	317A.060	201 KAR 012:030
304.9-105	806 KAR 009:025		201 KAR 012:060
304.9-130	806 KAR 009:025		201 KAR 012:230
304.9-150	806 KAR 009:025		201 KAR 012:290
304.9-160	806 KAR 009:025	317A.062	201 KAR 012:260
304.9-230	806 KAR 009:025	317A.070	201 KAR 012:190
304.9-260	806 KAR 009:025	317A.090	201 KAR 012:082
304.9-270	806 KAR 009:025	317A.140	201 KAR 012:060
304.9-295	806 KAR 009:025		201 KAR 012:190
304.9-320	806 KAR 009:025	317A.145	201 KAR 012:030
304.9-430	806 KAR 009:025		201 KAR 012:190
304.9-642	806 KAR 009:025	321.185	301 KAR 002:075
304.39-110	603 KAR 005:350	322.340	807 KAR 005:001E
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311.5975	900 KAR 012:005	337.355	201 KAR 002:450
311.720	901 KAR 005:120	337.365	201 KAR 002:450
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	922 KAR 001:350	342.019	803 KAR 025:089
311.732	901 KAR 005:140	342.020	803 KAR 025:089
311.7731	902 KAR 020:365	342.035	803 KAR 025:089
311.7733	902 KAR 020:365	363.900-363.908	302 KAR 079:009
311.7734	902 KAR 020:365	365.015	807 KAR 005:001E
311.774	901 KAR 005:120	369.101-369.120	907 KAR 001:044
311.781	901 KAR 005:120	369.102	807 KAR 005:001E
311.782	901 KAR 005:120	400.203	907 KAR 001:044
311.783	901 KAR 005:120		907 KAR 003:010
311.840	907 KAR 003:010	403.160	921 KAR 001:400
	922 KAR 001:350	403.210-403.240	921 KAR 001:400
311.901	201 KAR 009:305	403.211	921 KAR 001:380
311.905	201 KAR 009:305	403.720	921 KAR 002:006
311.909	201 KAR 009:305		921 KAR 002:370
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311A.140	202 KAR 007:701		921 KAR 001:400
311A.160	202 KAR 007:701	405.440	921 KAR 001:400
311A.165	202 KAR 007:701	405.450	921 KAR 001:400
311A.170	202 KAR 007:701	405.467	921 KAR 001:380
311A.175	202 KAR 007:701	405.520	921 KAR 001:380
313.021	201 KAR 008:601	405.991	921 KAR 001:400
313.022	201 KAR 008:601	406.021	921 KAR 001:380
314.011	201 KAR 020:490		921 KAR 001:400
	922 KAR 001:350	406.025	921 KAR 001:380
	922 KAR 002:160		921 KAR 001:400
314.041	201 KAR 020:260	407.5101-407.5903	921 KAR 001:380
314.111	201 KAR 020:260	414	907 KAR 003:010
	201 KAR 020:310	415.110	907 KAR 003:010
314.131	201 KAR 020:260	415.208	907 KAR 001:044
314.400-314.414	201 KAR 020:620	416.164	907 KAR 001:008
314.404-314.416	201 KAR 020:650	416.166	907 KAR 001:008
314.475	201 KAR 020:310	422.317	907 KAR 001:044
315.010	201 KAR 002:380	424	922 KAR 001:300
	201 KAR 002:413E	424.300	807 KAR 005:001E

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431.17	907 KAR 001:044		921 KAR 001:380
431.52	907 KAR 001:044		921 KAR 001:400
434.840-434.860	907 KAR 001:044		921 KAR 002:006
438.2	907 KAR 003:010		921 KAR 002:016
439	501 KAR 006:050		921 KAR 002:017
	501 KAR 006:080		921 KAR 002:035
	501 KAR 006:050		921 KAR 002:370
440.50	907 KAR 003:010		921 KAR 002:500
440.120	907 KAR 023:020		921 KAR 002:510
447.10	907 KAR 003:010		921 KAR 002:520
447.200-447.205	907 KAR 003:010		922 KAR 001:350
447.271	907 KAR 001:008		922 KAR 002:160
447.325	907 KAR 003:010	47 C.F.R.	807 KAR 005:001E
447.45	907 KAR 023:020	50 C.F.R.	301 KAR 002:075
447.500-447.520	907 KAR 023:020	7 U.S.C.	302 KAR 026:010
454.220	921 KAR 001:400		302 KAR 026:020
527.100	922 KAR 001:350		302 KAR 026:150
527.110	922 KAR 001:350		302 KAR 027:011
600.020	921 KAR 002:500		302 KAR 028:011
	922 KAR 001:300		302 KAR 029:011
	922 KAR 001:350		921 KAR 002:006
	922 KAR 002:160		922 KAR 002:160
605.080	922 KAR 001:300	8 U.S.C.	921 KAR 002:006
605.090	922 KAR 001:300		921 KAR 002:016
	922 KAR 001:350		922 KAR 001:350
605.120	922 KAR 002:160	15 U.S.C.	908 KAR 001:374
610.110	922 KAR 001:300	20 U.S.C.	807 KAR 005:001E
	922 KAR 001:350		921 KAR 002:016
610.170	921 KAR 001:380		922 KAR 001:300
615.010	922 KAR 001:300	21 U.S.C.	921 KAR 002:006
615.030	922 KAR 001:300	22 U.S.C.	921 KAR 002:006
615.040	922 KAR 001:300	25 U.S.C.	921 KAR 002:016
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	922 KAR 001:300	26 U.S.C.	900 KAR 010:120
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620.090	922 KAR 001:300		921 KAR 002:370
620.140	922 KAR 001:300		922 KAR 002:160
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620.360	922 KAR 001:350		922 KAR 002:160
620.363	922 KAR 001:350		105 KAR 001:415
625	922 KAR 001:350		106 KAR 001:141
7 C.F.R.	902 KAR 008:160		106 KAR 001:171
	922 KAR 002:160		106 KAR 001:181
16 C.F.R.	302 KAR 079:009		106 KAR 001:191
	603 KAR 005:350		106 KAR 001:201
	922 KAR 001:350		106 KAR 001:221
20 C.F.R.	922 KAR 002:160		201 KAR 002:413E
21 C.F.R.	908 KAR 001:374		900 KAR 010:120
26 C.F.R.	900 KAR 010:120		900 KAR 012:005
29 C.F.R.	900 KAR 010:120		907 KAR 001:044
34 C.F.R.	922 KAR 002:160		907 KAR 001:065
40 C.F.R.	302 KAR 026:020		907 KAR 004:020
	302 KAR 026:150		907 KAR 004:030
	302 KAR 027:011		907 KAR 020:020
	302 KAR 028:011		907 KAR 023:020
	302 KAR 079:009		921 KAR 001:380
42 C.F.R.	900 KAR 010:120		921 KAR 001:400
	907 KAR 001:008		921 KAR 002:006
	907 KAR 001:044		921 KAR 002:500
	907 KAR 001:065		921 KAR 002:016
	907 KAR 003:010		921 KAR 002:510
	907 KAR 004:020		921 KAR 002:520
	907 KAR 004:030		922 KAR 001:300
	907 KAR 020:020		922 KAR 001:350
	907 KAR 023:020		922 KAR 002:160
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	922 KAR 001:350		907 KAR 003:010
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	900 KAR 010:120		921 KAR 002:040
	907 KAR 001:044		921 KAR 002:050

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			921 KAR 002:060
			921 KAR 002:370
49 U.S.C.			302 KAR 029:011
50 U.S.C.			106 KAR 001:141
			106 KAR 001:171
52 U.S.C.			921 KAR 002:035

## CERTIFICATION LETTER SUMMARIES

The certification process is established in KRS 13A.3104. If the certification letter states the regulation shall be amended, the administrative body shall file an amendment to the regulation within 18 months of the date the certification letter was filed. If the certification letter states that the regulation shall remain in effect without amendment, the last effective date of the regulation is changed to the date the regulations compiler received the letter.

\* KRS 13A.010(6) - "Effective" or "eff." means that an administrative regulation has completed the legislative review process established by KRS 13A.290, 13A.330, and 13A.331.

Regulation Number	Letter Filed Date	Action
013 KAR 002:045	06-22-2022	Remain in Effect without Amendment
016 KAR 004:030	09-08-2022	To be amended, filing deadline 03-08-2024
031 KAR 003:040	09-02-2022	To be amended, filing deadline 03-02-2024
031 KAR 004:120	09-02-2022	Remain in Effect without Amendment
031 KAR 004:180	09-02-2022	To be amended, filing deadline 03-02-2024
201 KAR 002:220	09-09-2022	To be amended, filing deadline 03-09-2024
201 KAR 009:305	09-08-2022	To be amended, filed on 07-13-2022
201 KAR 044:010	07-01-2022	Remain in Effect without Amendment
301 KAR 001:122	08-04-2022	To be amended, filing deadline 02-04-2022
301 KAR 001:146	08-04-2022	To be amended, filing deadline 02-04-2024
500 KAR 013:020	08-25-2022	To be amended, filing deadline 02-24-2024
601 KAR 009:135	06-02-2022	Remain in Effect without Amendment
603 KAR 005:155	07-26-2022	Remain in Effect without Amendment
702 KAR 001:170	08-09-2022	Remain in Effect without Amendment
803 KAR 001:035	06-13-2022	Remain in Effect without Amendment
803 KAR 002:402	08-26-2022	To be amended, filing deadline 2-26-2024
803 KAR 002:445	08-26-2022	To be amended, filing deadline 02-26-2024
804 KAR 004:015	09-13-2022	Remain in Effect without Amendment
804 KAR 010:031	09-13-2022	Remain in Effect without Amendment
808 KAR 012:020	09-16-2022	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
907 KAR 010:014	08-10-2022	Remain in Effect without Amendment
907 KAR 010:016	08-10-2022	Remain in Effect without Amendment
907 KAR 015:085	8/10/2022	Remain in Effect without Amendment
910 KAR 001:170	06-09-2022	To be Amended, Filing deadline 12-09-2023
910 KAR 001:270	08-11-2022	To be amended, filing deadline 02-11-2024

## TECHNICAL AMENDMENT INDEX

The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments made during the 49<sup>th</sup> year of the *Administrative Register of Kentucky*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.2255(2), 13A.312(2), or 13A.320(1)(d). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published to show the technical corrections in the *Register*. NOTE: Technical amendments may be available online for a short period of time before finalized versions of the technically amended regulations are available. To view regulations on the Legislative Research Commission Web site go to <https://apps.legislature.ky.gov/law/kar/titles.htm>.

‡ - A technical change was made to this administrative regulation during the promulgation process, pursuant to KRS 13A.320(1)(e).

† - A nonsubstantive change was made by the Compiler pursuant to KRS 13A.040(9).

Regulation Number	Date Corrected	Regulation Number	Date Corrected
NONE			

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Trainee registration and supervision; 302 KAR 026:050

#### Structural Pest Control

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*See listing below for other possible, specific subject headings:*

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