



ADMINISTRATIVE REGISTER OF KENTUCKY

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon June 15, 2023

MEETING NOTICES

[Administrative Regulation Review Subcommittee](#) - **tentatively** scheduled to meet on July 13, 2023, at 1:00 p.m. in room 149 Capitol Annex.
[Education Assessment and Accountability Review Subcommittee](#) - **tentatively** scheduled to meet on July 17, 2023, at 1:00 p.m. in room 149 Capitol Annex.

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

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Title		Chapter	Regulation
806	KAR	050:	155
Cabinet, Department, Board, or Agency		Office, Division, Board, or Major Function	Specific Regulation

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VOLUME 50, NUMBER 1– JULY 1, 2023

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all of the administrative regulations that may be removed to complete the public comment process or deferred or withdrawn by promulgating agencies.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
Thursday, July 13, 2023 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 009:080E. University-*based alternative certification program. ("E" expires 01-21-2024) (Filed with Ordinary)
016 KAR 009:100E. Alternative Route to Certification Program. ("E" expires 01-21-2024) (Filed with Ordinary)

PERSONNEL CABINET

Personnel Cabinet; Classified

101 KAR 002:034. Classified compensation administrative regulations. (Not Amended After Comments)
101 KAR 002:095. Classified service general requirements. (Deferred from June)
101 KAR 002:181. Repeal of 101 KAR 002:180. (Deferred from June)

Personnel Cabinet; Unclassified

101 KAR 003:045. Compensation plan and pay incentives for unclassified service. (Deferred from June)

BOARDS AND COMMISSIONS

Board of Licensure for Long-Term Care Administrators

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

Board of Chiropractic Examiners

201 KAR 021:025. Board; officers, duties, and compensation. (Deferred from June)
201 KAR 021:041. Licensing; standards, fees. (Amended After Comments)
201 KAR 021:042. Standards, applications and approval of continuing education. (Amended After Comments)
201 KAR 021:075. Peer review committee procedures and fees. (Deferred from June)
201 KAR 021:095. Licensure, registration, and standards of persons performing peer review. (Deferred from June)
201 KAR 021:105. Telehealth chiropractic services. (Deferred from June)

Board of Social Work

201 KAR 023:016. Temporary permission to practice. (Filed with Emergency) (Deferred from January)

TOURISM, ARTS AND HERITAGE CABINET

**Department of Fish and Wildlife Resources
Water Patrol**

301 KAR 006:001. Definitions for 301 KAR Chapter 6.
301 KAR 006:020. Boating safety equipment.

JUSTICE AND PUBLIC SAFETY CABINET

Internal Investigation Branch

Special Law Enforcement Officers

500 KAR 002:020. Filing and processing SLEO commissions. (Amended After Comments)

Special Local Peace Officers

500 KAR 003:010. Definitions.
500 KAR 003:020. Filing and processing SLPO commissions.

Department of Corrections

Office of the Secretary

501 KAR 006:150. Eastern Kentucky Correctional Complex policies and procedures. (Amended After Comments)

Department of Juvenile Justice

Child Welfare

505 KAR 001:200E. Cell entry teams, emergency response teams, and emergency response training. ("E" expires 02-09-2024) (Filed with Ordinary)
505 KAR 001:210E. Restraints and control methods. ("E" expires 02-09-2024) (Filed with Ordinary)
505 KAR 001:220E. Transportation of juveniles. ("E" expires 02-09-2024) (Filed with Ordinary)

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PUBLIC PROTECTION CABINET

Department of Insurance Health Insurance Contracts

806 KAR 017:570E. Minimum standards for Medicare supplement insurance policies and certifications. ("E" expires 01-23-2024)

Horse Racing Commission Flat and Steeplechase Racing

810 KAR 004:010E. Horses. ("E" expires 12-24-2023) (Deferred from June)

Medication Guidelines

810 KAR 008:020. Drug, medication, and substance classification schedule. (Deferred from June)

Housing, Buildings and Construction Elevator Safety

815 KAR 004:030. Elevator licensing.

Building Code

815 KAR 007:130. Kentucky Industrialized Building Systems.

Heating, Ventilation, and Air Conditioning Licensing Requirements

815 KAR 008:010. Licensing requirements for master HVAC contractors and journeyman HVAC mechanics.

Standards of Safety

815 KAR 010:060. Standards of Safety.

Plumbing

815 KAR 020:030. Plumbing licenses.

Manufactured Homes and Recreational Vehicles

815 KAR 025:020. Recreational vehicles.

815 KAR 025:060. Licensing and certifications with manufactured homes and mobile homes.

Electrical

815 KAR 035:060. Licensing of electrical contractors, master electricians, and electricians.

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General Essential Personal Care Visitor Program

900 KAR 014:010. Essential personal care visitor programs; visitation guidelines. (Filed with Emergency)

Health Services and Facilities

902 KAR 020:018. Operation and services; End Stage Renal Disease (ESRD) facilities.

Controlled Substances

902 KAR 055:015. Schedules of controlled substances. (Filed with Emergency)

Department for Medicaid Services

Medicaid Services

907 KAR 001:038E. Hearing Program coverage and requirements. (Filed with Ordinary) ("E" expires 01-07-2024) (Not Amended After Comments)

907 KAR 001:038. Hearing Program coverage provisions and requirements. (Filed with Emergency)

907 KAR 001:126E. Dental services' coverage provisions and requirements. (Filed with Ordinary) ("E" expires 01-07-2024) (Not Amended After Comments)

907 KAR 001:126. Dental services' coverage provisions and requirements. (Filed with Emergency)

907 KAR 001:632E. Vision program coverage provisions and requirements. (Filed with Ordinary) ("E" expires 01-07-2024) (Amended After Comments)

907 KAR 001:632. Vision program coverage provisions and requirements. (Filed with Emergency)

Payment and Services

907 KAR 003:190. Reimbursement for treatment related to clinical trials. (Not Amended After Comments)

Medicaid Eligibility

907 KAR 020:010E. Medicaid procedures for determining initial and continuing eligibility other than procedures related to a modified adjusted gross income eligibility standard or related to former foster care individuals. ("E" expires 01-15-2024) (Filed with Ordinary)

907 KAR 020:045E. Special income requirements for hospice and 1915© home and community based services. ("E" expires 01-15-2024) (Filed with Ordinary)

907 KAR 020:075E. Eligibility provisions and requirements regarding former foster care individuals, and individuals who were in out-of-state equivalents to foster care. ("E" expires 01-15-2024) (Filed with Ordinary)

907 KAR 020:100E. Modified Adjusted Gross Income (MAGI) Medicaid eligibility standards. ("E" expires 01-15-2024) (Filed with Ordinary)

Department for Community Based Services

Child Welfare

922 KAR 001:360E. Private child care placement, levels of care, and payment. ("E" expires 01-29-2024. (Filed with Ordinary)

3. REGULATIONS REMOVED FROM JULY'S AGENDA

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

State Health Plan

900 KAR 005:020. State Health Plan for facilities and services. (Filed with Emergency) (Comments Received; SOC ext. due 07-14-2023)

Certificate of Need

900 KAR 006:075. Certificate of need nonsubstantive review. (Filed with Emergency) (Comments Received; SOC ext. due 07-14-2023)

**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; 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 next *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 the month of 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. Filing deadlines are established in KRS 13A.050.

Review Procedure

After the public hearing and public comment period processes are completed, the administrative regulation is 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. Other statutes or legislation may also affect a regulation's actual end date.

STATEMENT OF EMERGENCY
202 KAR 7:555E

This emergency administrative regulation is being promulgated in order to meet an imminent threat to public health, safety, and welfare. Specifically, this emergency amendment is necessary to help prevent certain counties from being left without any Class I emergency ambulance services. The Class I emergency ambulance agencies currently providing service to Knott and Lewis Counties have given notice to the County Judge Executives that they plan to cease their ambulance services. The two agencies are the only Class I emergency ambulance services for their respective counties. Without this emergency amendment, if the agencies surrender their licenses to the Board office, Knott and Lewis Counties could be left with no Class I emergency ambulance service. Other Class I agencies may also soon cease providing continuous emergency ambulance services. The current version of this administrative regulation does not provide the Board authority (1) to temporarily suspend a Class I, II, III, VI, or VII license that has not been surrendered by an agency after it ceases to provide continuous service, or (2) to issue a temporary Class I license to another entity that could provide Class I emergency ambulance services if the only Class I license for a geographic service area is surrendered or temporarily suspended.

First, this emergency amendment provides a mechanism for the Board to temporarily suspend a Class I, II, III, VI, or VII license that is not surrendered after the agency ceases continuous service in accordance with the current version of this administrative regulation. Under this amendment, a Class I, II, III, VI, or VII agency may retain its license after ceasing continuous service if: (1) the Executive Director of the Board determines, in writing, that circumstances beyond the agency's control exist which justify the agency's temporary cessation of continuous service, (2) the Executive Director of the Board determines, in writing, that public health, safety, and welfare will be better served by allowing the agency to resume continuous service within 72 hours after ceasing continuous service, and (3) the agency resumes providing continuous service within 72 hours after ceasing continuous service. Under this amendment, a Class I, II, III, VI, or VII agency that fails to surrender its license within 24 hours after ceasing continuous service shall be deemed to pose a threat to the public and its license shall be temporarily suspended in accordance KRS 311A.075 if either: (1) the Executive Director does not make the determinations described above or (2) the Executive Director makes the determinations described above, but the agency fails to resume continuous service within 72 hours after ceasing continuous service and fails to surrender its license within 72 hours after ceasing continuous service.

Second, this emergency amendment provides a mechanism for the Board to issue a temporary Class I hardship license to the county or counties listed as the geographic service area on a surrendered or temporarily suspended Class I license if the agency was the only Class I agency for the geographic service area. Under this amendment, a county must begin providing continuous service no later than 120 days after it is issued a temporary Class I hardship license. A county may not transfer a temporary hardship license, but may contract with a licensed Class I agency to provide service to the geographic service area listed on the temporary hardship license. Additionally, for up to and not exceeding 120 days after a temporary hardship license is issued to a county, the county may request that any licensed Class I agency respond to a call for service in the geographic service area listed on the temporary hardship license. A temporary hardship license will expire one (1) year after the license is issued, after a new Class I license is issued for the geographic service area, or, if the Class I license for the geographic service area was temporarily suspended under this amendment and KRS 311A.075, after that license is

reinstated, whichever occurs first.

Third, this emergency amendment requires Class I agencies to schedule a minimum of one (1) staffed ambulance to be staged in the agency's geographic service area.

Finally, this emergency amendment contains amendments that were previously reviewed by the Administrative Regulations Review Subcommittee (ARRS) during its meeting on March 7, 2023. Those amendments allow healthcare facilities to contact any other licensed agency if the agency licensed for a specific geographic service area is unable to respond to a non-emergency call within two (2) hours from the initial time a non-emergency call is received. So that this emergency amendment may be promulgated, the Board has withdrawn the ordinary amendment reviewed by the ARRS on March 7, 2023. The changes contained in the withdrawn ordinary amendment have been incorporated into this emergency amendment.

An ordinary administrative regulation is not sufficient to address the imminent risk of certain counties being left without any Class I emergency ambulance services, which poses an imminent threat to public health, safety, and welfare. This emergency amendment is necessary to provide the Board a mechanism (1) to temporarily suspend a Class I, II, III, VI, and IV license if an agency fails to surrender its license after ceasing continuous service and (2) to issue a temporary Class I hardship license to the county or counties served under a Class I license that has been surrendered or temporarily suspended and that is the only Class I license for the geographic service area. Additionally, this emergency amendment is necessary to ensure Class I agencies have at least one ambulance staged in the agency's geographic service area. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
JOHN R. HOLDER, Board Chair

KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES
(Emergency Amendment)

202 KAR 7:555E. Ground agencies.

RELATES TO: KRS 311A.030, 311A.190, 29 C.F.R. 1910.1030

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030, 311A.190

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.020 requires the Board of Emergency Medical Services to exercise all administrative functions in the regulation of the EMS system and the licensing of ambulance services and medical first response agencies, except those regulated by the Board of Medical Licensure[Emergency Medical Services] or the Cabinet for Health and Family Services. KRS 311A.030 requires the board to promulgate administrative regulations for the licensing, inspection, and regulation of ambulance providers and medical first response agencies. This administrative regulation establishes minimum licensing requirements.

Section 1. Utilization of Ground Vehicles by Class I, II, III, and IV Licensed Agencies.

(1) At the time of initial inspection, each agency shall inform the Kentucky Board of Emergency Medical Services (KBEMS) office of the make, model, year, vehicle identification number or serial number, and license tag number for each vehicle the agency plans to use for medical care and transportation.

(2) A vehicle shall not be placed into operation until the board has conducted a physical inspection of the vehicle and determined it meets the requirements of 202 KAR Chapter 7.

(3) Each agency shall complete a Vehicle Delete application in the Kentucky Emergency Medical Services Information System (KEMSIS), no later than the next business day after the permanent removal of any licensed vehicle from service by the license holder.

(4)(a) A licensed agency may use a replacement vehicle that meets all of the requirements of 202 KAR Chapter 7 on a temporary basis while a permitted vehicle is out of service. The agency shall complete an Add TEMPORARY Vehicle/Aircraft Part 1 application in KEMSIS within twenty-four (24) hours of the replacement.

(b) A temporary replacement vehicle shall not be used for more than thirty (30) days annually unless the KBEMS office has verified, through a physical inspection, that it meets the requirements of 202 KAR Chapter 7.

(5) The KBEMS office shall be notified by a completed Add TEMPORARY Vehicle/Aircraft Part 2 application in KEMSIS within twenty-four (24) hours or on the next business day if a temporary vehicle is removed from service and the original licensed vehicle is returned to service.

(6)(a) An agency that fails to report using a temporary vehicle shall be required to immediately cease use of the replacement vehicle until the reporting requirements are met.

(b) An agency that fails to remove a temporary vehicle from service after thirty (30) days shall be fined \$500 for each day or partial day the vehicle is in service and not reported.

(7) This administrative regulation shall not prevent a licensed agency from utilizing other means of transporting patients in:

(a) Disasters;

(b) Mass casualty incidents; or

(c) Extraordinary scene conditions that would impair access to the safety or care of the patient or personnel operating at the scene.

Section 2. Provider Management Requirements.

(1) All licensed agencies shall maintain:

(a) An organizational chart that establishes lines of authority, including the designation of:

1. An administrator responsible for assuring compliance with KRS Chapter 311A and 202 KAR Chapter 7 during the daily operation of the service; and

2. A designee who shall serve in the absence of the administrator;

(b) Records and reports at the ambulance agency base station including:

1. An original, electronic equivalent, or copy of all patient care records consistent with the U.S. Department of Transportation National Highway Traffic Safety Administration (NHTSA) National Emergency Medical Services Information System (NEMSIS) data dictionary found at www.nemsis.org/technical-resources/version-3;

2. An electronic copy of all completed patient care reports, which shall be maintained to ensure confidentiality and safekeeping for at least seven (7) years from the date on which the service was rendered, or in the case of a minor, at least three (3) years after the minor reaches the age of majority; and

3. Copies of Patient Care Reports for the preceding twelve (12) months, which shall be accessible and be immediately available to the board, KBEMS office, or representatives upon request;

(c) Personnel files for each employee or volunteer who staffs a vehicle of a licensed agency. Personnel files shall be maintained for at least one (1) year following separation from employment. As a minimum, all personnel files shall contain:

1. A pre-employment and annual criminal background check administered by the Kentucky Administrative Office of the Courts;

2. A copy of the employee's valid KBEMS certification or licensure card; and

3. A copy of each employee's completion of the National Incident Management System (NIMS) Incident Command System (ICS) 100, 200, 700, and 800 courses;

(d) A policy for the provision of a pre-employment and annual health assessment of employees of the agency, which shall include reporting mechanisms for work-related illness or injury;

(e) A written plan for providers to consult with online adult and pediatric medical direction. This plan shall address as a minimum:

1. The availability of medical direction twenty-four (24) hours a day, seven (7) days a week;

2. The availability of medical direction during an emergency event;

3. The provision of medical direction by a medical professional with a higher level of training or expertise; and

4. Recommended actions if:

a. There is an equipment failure, a communication barrier, or other unusual circumstance; and

b. It is not possible to contact online medical direction

(f) A plan and records for the provision of continuing education for staff and volunteers, including:

1. A written plan for the method of assessment of staff continuing education needs; and

2. A coordinated plan to meet those needs, including a provision that all continuing education shall be provided either by a licensed TEI or in accordance with 202 KAR 7:601;

(g) An infection control plan in accordance with 29 C.F.R. 1910.1030;

(h) A written plan for training or educating personnel for responding to hazardous materials, criminal, and potential terrorist incidents, including plans for the protection and decontamination of patients, ambulances, equipment, and staff;

(i) A written policy regarding the appropriate destination of a patient who expires during transport if a valid Kentucky EMS Do Not Resuscitate (DNR), or Medical Orders for Scope of Treatment (MOST) form is present;

(j) A written plan for the quality assessment of patient care and provider quality improvement, including a monthly review of patient care reports and evaluation of staff performance related to patient care. This plan shall address as a minimum:

1. Employee health and safety;

2. Compliance with protocols and operating procedures;

3. Assessment of dispatch protocols;

4. Vehicle operations and vehicle safety;

5. Additional training necessary for the patient care provider or providers;

6. Equipment preventive maintenance programs; and

7. A process for the resolution of customer complaints;

(k) A written plan for training personnel and responding to mass casualty incidents and disasters;

(l) A written orientation program for all personnel, including at a minimum:

1. Validation of certification or license with KBEMS;

2. Validation of the National Incident Management System (NIMS) Incident Command System (ICS) 100, 200, 700, and 800 courses within sixty (60) days of employment for any employee who staffs a licensed vehicle;

3. Validation of Driver's License if applicable;

4. A review of all agency policies, procedures, and protocols;

5. Communication equipment at the base station and on each vehicle;

6. Operational aspects of the agency fleet and equipment;

7. Inspection and routine maintenance of agency fleet, facilities, and equipment;

8. Appropriate processes for disinfection of agency fleet, facilities, and equipment;

9. Local navigation and geographic orientation; and

10. Completion of Patient Care Reports and other documentation as established by the agency;

(m) Proof of professional liability malpractice insurance of a minimum of \$1,000,000; and

(n) Proof of vehicular liability insurance.

(2) Each agency shall notify the board at least twenty-four (24) hours prior to the transfer of coverage, cancellation, lapse, or other cessation or change in professional liability malpractice insurance or vehicular liability insurance.

(3) Each agency shall verify valid staff certification or licensure as of the first day of the calendar year.

(4) If ceasing to operate, an agency shall provide the board with the physical storage location of all Patient Care Reports within five (5) business days of closure. These reports shall be maintained by the owner of the licensed agency, or a contracted

third party to meet the timeline established in subsection (1)(b) of this section.

(5) Each agency that allows an employed emergency responder to provide medical services while off duty in accordance with 202 KAR 7:701, Section 6, shall maintain and implement a policy regarding which employees are approved to provide medical services off duty by the agency's medical director and the manner in which worker's compensation and general liability insurance covers employees off duty. The policy shall be signed by both the agency's administrator and medical director, shall be reviewed annually, and shall include:

(a) Direction on which employees may remove medical equipment from the agency's premises for the purpose of providing care off duty;

(b) Direction on which equipment may be removed from the agency's premises for the purpose of providing care off duty; and

(c) A provision that controlled substances shall not be removed from the agency's premises for the purposes of providing care off duty.

(6) Each agency shall in the county in which the agency's base station or a satellite is located:

(a) Document evidence of participation in a local, county, regional, or state disaster or preparedness exercise within the preceding twelve (12) months;

(b) Coordinate with the county emergency management director plans for the possible use of agency personnel for use in the emergency operations center in a disaster; and

(c) Maintain a hard copy or electronic equivalent of the most current adopted city, county, or urban county government emergency management agency's emergency operations plan at the ambulance base station.

Section 3. Operating Requirements. (1) Each licensed agency, except Class IV and VIII, shall provide service twenty-four (24) hours a day, seven (7) days a week. Class IV and VIII agencies shall operate during the hours of operation for their geographical service area or designated event.

(2) Each licensed agency shall retain staffing schedules for at least the previous twelve (12) months.

(3) Each agency administrator or designee shall be familiar with emergency management reporting and procurement processes and software platforms utilized to communicate the needs of the local government to state agencies.

~~[(4) A licensed Class I, II, III, VI, or VII agency that ceases to provide continuous service on a twenty-four (24) hour basis shall surrender its license to the board's office within twenty-four (24) hours of the agency ceasing to provide continuous service.]~~

~~[(4)][(5)] A licensed agency shall have a written plan to assure all requests for service shall be promptly answered.~~

~~[(5)][(6)] A licensed agency shall have a written scope of care policy to include the types of services performed, limitations of response, and the types of medical teams provided.~~

~~[(6)][(7)] Any agency licensed and located within the geographical service area that determines it is unable to have a vehicle responding within ten (10) minutes from the initial time an emergency call is received [from the dispatch center] shall request that [notify] the next closest appropriate licensed agency [to] respond.~~

~~[(7) If an agency licensed for a specific geographical service area is unable to respond to a non-emergency call within two (2) hours from the initial time a non-emergency call is received, the requesting healthcare facility may contact any licensed agency and request that the agency conduct the transport.]~~

(8) An agency shall enter into a mutual aid agreement with another Kentucky licensed ambulance agency operating within the same or contiguous counties that provide response to medical emergencies. These agreements shall be in writing and address:

(a) The type of mutual aid assistance to be provided, including advanced life support (ALS) or basic life support (BLS) medical care and transport and ALS or BLS medical first response;

(b) Response personnel, including levels of training or education and provisions for joint in-service training or education if appropriate;

(c) Response vehicles, including unit identifiers and the station or location from which the vehicles shall be operated;

(d) A plan of action for the mutual aid agreement, including dispatch and notification procedures;

(e) Radio and other communications procedures between the ambulance agency and other response agencies with which the agency has mutual aid agreements;

(f) On-scene coordination and scene control including medical direction if several agencies respond to the same incident;

(g) Exchange of patient information, records, and reports as allowed by law; and

(h) The effective dates and process for amendment or termination.

(9) A ground agency shall send a written request for a mutual aid agreement to at least two (2) contiguous counties and retain a copy of each request and each county's response;

(10) Each agency shall maintain a policy or affiliation agreement with the primary call-taking center that provides dispatch services for all or part of the service area of the ground agency. The agreement shall state at a minimum that:

(a) Requests for emergency ambulance service shall be dispatched or notified within two (2) minutes from determining that the caller is requesting ambulance response;

(b) If the closest licensed agency for that geographic service area is unable to have a vehicle responding to an emergency call within ten (10) minutes from the time the call is dispatched, the agency shall notify the next closest appropriate licensed agency to respond; and

(c) The agreement shall specify which patient information shall be collected by the call-taking center during a call for service.

(11) If a ground agency is unable to secure a written affiliation agreement with the dispatch center, the ground agency shall retain all written correspondence to the dispatch center requesting an affiliation agreement and the dispatch center's denial of the agency's request.

(12) An agency shall not respond to requests for emergency service outside of its licensed geographic service area without first receiving authorization from the licensed agency in the geographic service area in which the request originates.

(13) A licensed Class I ground agency that is located in a geographical service area containing multiple destination hospitals, with regard to the furnishing of 911 response and transportation, shall not engage in:

(a) Exclusive or coercive practices regarding transportation decisions with regard to any affiliated hospital or hospital emergency department;

(b) Preferential transportation to any affiliated hospital emergency department if the transports are not justified by time, place, patient convenience, or other objective factors affecting a patient;

(c) Noncompetitive transportation to any affiliated hospital emergency department; or

(d) Transports to any affiliated hospital emergency department if that hospital is not the closest to the patient location or most appropriate based on the availability of particular services or patient preference.

[(14) Each licensed Class I ground agency shall schedule a minimum of one (1) staffed ambulance to be staged in the agency's geographic service area.]

~~[(15)][(44)] An agency that cannot meet the timelines established in subsection (10) of this section shall contact another licensed agency and receive an estimated time of arrival to the request for service. If the mutual aid agency can arrive at the location where the request originated more quickly than the agency licensed for the geographic service area, the agency licensed for the geographic service area shall request mutual aid from its neighboring agency to respond to the call.~~

~~[(16)][(45)] An agency shall not refuse a request for emergency pre-hospital response if a unit is available in its geographic service area.~~

~~[(17)][(46)] An agency shall not exhaust its resources by answering a nonemergency call or for response to mutual aid requests.~~

(18) [(47)] This administrative regulation shall not be construed to prevent a licensed agency from providing medical first response emergency or nonemergency pre-hospital care at or below the level for which the agency is licensed through the use of designated agency-owned response vehicles.

(19) [(48)] A communications system shall be developed, coordinated, and maintained by each licensed agency. The communication system shall comply with paragraphs (a) through (f) of this subsection.

(a) Radio equipment used in emergency medical services vehicles shall be appropriately licensed through the Federal Communications Commission (FCC). Copies of the current FCC licenses shall be on file in the agency office.

(b) Each ambulance shall have an operational push-to-talk two-way radio programmed with all very high frequency (VHF) Kentucky State Mutual Aid Frequencies in accordance with the Commonwealth of Kentucky Field Operations Guide (KY-FOG).

(c) Each ambulance shall be equipped with a minimum of one (1) mobile two-way radio located in the driver's compartment.

(d) Each ambulance shall have a minimum of two (2) portable push-to-talk two-way radios capable, under normal conditions, of operating on the agency, dispatch center, mutual aid, and hospital frequencies.

(e) Each ambulance shall be equipped with two-way radio communication equipment with the ability to communicate from the driver's compartment and patient care compartment.

(f) One (1) alternative method of two-way communication may be substituted for one (1) portable two-way radio.

Section 4. Ceasing Continuous Service.

(1) A licensed Class I, II, III, VI, or VII agency that ceases to provide continuous service on a twenty-four (24) hour basis shall surrender its license to the board office within twenty-four (24) hours of the agency ceasing to provide continuous service.

(2) The agency's chief operations or service director shall immediately contact the executive director of the board upon determining that his or her Class I, II, III, VI, or VII agency will cease providing continuous service, and shall provide the approximate date and time that the agency will cease continuous service.

(3) The agency's chief operations or service director shall immediately contact the executive director of the board upon determining that his or her Class I, II, III, VI, or VII agency has ceased providing continuous service, and shall provide the date and time that the agency ceased continuous service.

(4) Notwithstanding subsection (1) of this section and Section 3(1) of this administrative regulation, a Class I, II, III, VI, or VII agency shall resume continuous service no later than seventy-two (72) hours after ceasing continuous service if the executive director of the board determines, in writing, that:

(a) Circumstances beyond the agency's control exist which justify the agency's temporary lapse in continuous service; and

(b) Public health, safety, and welfare will be better served by allowing the agency to resume continuous service within seventy-two (72) hours after ceasing continuous service.

(5) A licensed Class I, II, III, VI, or VII agency that ceases continuous service shall be deemed to pose a threat to the public and the agency's license shall be temporarily suspended in accordance with KRS 311A.075 if:

(a) The agency fails to surrender its license in accordance with subsection (1) of this section; and

(b) The executive director of the board does not make the determinations set forth in subsection (4)(a) and (b) of this section; or

(c) The executive director of the board makes the determinations set forth in subsection (4)(a) and (b) of this section, but the agency fails to resume continuous service within seventy-two (72) hours after ceasing continuous service and fails to surrender its license to the board office within seventy-two (72) hours after ceasing continuous service.

Section 5. Issuance of Temporary Class I Hardship Licenses to Counties.

(1) The board office shall issue a temporary Class I hardship license to the county or counties listed as the geographic service area on a Class I license that:

(a) Is the only Class I license for the geographic service area; and

(b) Is surrendered in accordance with Section 4(1) of this administrative regulation; or

(c) Is temporarily suspended in accordance with Section 4 of this administrative regulation and KRS 311A.075.

(2) A temporary hardship license shall not be transferrable.

(3) A county issued a temporary hardship license may contract with a licensed Class I agency to provide service to the geographic service area listed on the temporary hardship license.

(4) Notwithstanding Sections 3(1) and 4(1) of this administrative regulation, a county issued a temporary hardship license shall begin providing continuous service no later than 120 days after the license is issued.

(5) Notwithstanding any other administrative regulation promulgated by the board, for up to and not exceeding 120 days after a temporary hardship license is issued to a county under this section, the county may request that any licensed Class I agency respond to a call for service in the geographic service area listed on the temporary hardship license.

(6) A temporary hardship license shall expire one (1) year after the license is issued, after a new Class I license for the geographic service area is issued, or, if the Class I license for the geographic service area was temporarily suspended in accordance with Section 4 of this administrative regulation, after that license is reinstated, whichever occurs first.

Section 6. Medical Directors. (1) Each licensed agency shall have a medical director who meets the requirements established in 202 KAR 7:801.

(2) A licensed agency shall notify KBEMS within twenty-four (24) hours of a decision to discontinue a medical director agreement by either the agency or the medical director.

(3)(a) If an agency is found to be operating without a medical director, the agency shall be provided emergency medical direction by the KBEMS Medical Advisor for a fee of \$100 per day for the first thirty (30) calendar days the agency is without a medical director.

(b) The fee shall increase to \$500 per day after thirty (30) calendar days.

Section 7. [Section 5.] Public Notice of Negative Action. The board office shall cause to be published, on the KBEMS web site or similar publication of the board, the name of any licensed agency that is fined, placed on probationary status, placed on restricted status, suspended, or had a license revoked.

Section 8. [Section 6.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Commonwealth of Kentucky Field Operations Guide (KY-FOG)", (6/2012) found at <https://kwiec.ky.gov/SiteCollectionDocuments/KYFOG.pdf>;

(b) "NHTSA NEMSIS Data Dictionary", (v3.40) U.S. Department of Transportation National Highway Traffic Safety Administration (NHTSA) National Emergency Medical Services Information System (NEMSIS) data dictionary found at https://www.nemsis.org/media/nemsis_v3/3.4.0.150302/DataDictionary/PDFHTML/DEMENS/NEMSISDataDictionary.pdf;

(c) "Vehicle Delete application in KEMSIS", (12/2019);

(d) "Add TEMPORARY Vehicle/Aircraft application Part 1 in KEMSIS", (12/2019); and

(e) "Add TEMPORARY Vehicle/Aircraft application Part 2 in KEMSIS", (12/2019).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 500 Mero Street, 5th Floor 5SE32, Frankfort, Kentucky 40601[118 James Court, Suite 50, Lexington, Kentucky 40505], Monday through Friday, 8 a.m. to

4:30 p.m.

(3) This material is also available on the board's Web site at: kyems.com.

JOHN R. HOLDER, Board Chair

APPROVED BY AGENCY: April 13, 2023

FILED WITH LRC: May 22, 2023 at 2:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2023 at 1:00 p.m. ET at the Kentucky Board of Emergency Medical Services, 500 Mero Street, 5th Floor 5SE32, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2023. 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: John K. Wood, Legal Counsel, Kentucky Board of Emergency Medical Services, 163 E. Main Street, Suite 200, Lexington, Kentucky 40507, phone (859) 225-4714, email administrativeregulations@wgmfirm.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John K. Wood

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the licensure requirements for ambulance providers and medical first response agencies.

(b) The necessity of this administrative regulation: KRS 311A.020 requires the Board of Emergency Medical Services to exercise all administrative functions in the regulation of the EMS system and the licensing of ambulance services and medical first response agencies, except those regulated by the Board of Medical Licensure or the Cabinet for Health and Family Services. KRS 311A.030 requires the Board to promulgate administrative regulations for the licensing, inspection, and regulation of ambulance providers and medical first response agencies. This administrative regulation is necessary to establish licensure requirements for ambulance providers and medical first response agencies.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 311A.020 and 311A.030 by establishing licensure requirements for ambulance providers and medical first response agencies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 311A.020 requires the Board of Emergency Medical Services to exercise all administrative functions in the regulation of the EMS system and the licensing of ambulance services and medical first response agencies, except those regulated by the Board of Medical Licensure or the Cabinet for Health and Family Services. KRS 311A.030 requires the Board to promulgate administrative regulations for the licensing, inspection, and regulation of ambulance providers and medical first response agencies. This administrative regulation assists in the effective administration of those statutes by establishing licensure requirements for ambulance providers and medical first response agencies.

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

(a) How the amendment will change this existing administrative regulation: This emergency amendment provides the Board a mechanism to temporarily suspend a Class I, II, III, VI, or VII license that has not been surrendered by an agency after it ceases

to provide continuous service. An agency may retain its license if it can resume continuous service within 72 hours after ceasing continuous service and if the Executive Director of the Board determines, in writing, that (1) circumstances beyond the agency's control exist which justify the agency's temporary cessation of continuous service and (2) public health, safety, and welfare will be better served by allowing the agency to resume continuous service within 72 hours after ceasing continuous service.

This amendment also provides the Board a mechanism to issue a temporary hardship license to counties or counties that could otherwise be left without any Class I emergency ambulance service. If a Class I agency is the only emergency ambulance service for a geographic service area and the agency's license is surrendered or temporarily suspended, the Board office shall issue a temporary Class I hardship license to the county or counties listed as the geographic service area on the surrendered or suspended license. A temporary hardship license is not transferrable, but the county may contract with a licensed Class I agency to provide service to the geographic service area under a temporary hardship license. A county issued a temporary hardship license must begin providing continuous service no later than 120 days after the license is issued. During those 120 days, the county may request that any licensed Class I agency respond to a call for service in the geographic service area. A temporary hardship license will expire one (1) year after it is issued, after a new Class I license for the geographic service area is issued, or, if the Class I license for the geographic service area was temporarily suspended, after that license is reinstated, whichever occurs first.

Finally, this amendment requires Class I agencies to schedule a minimum of one (1) staffed ambulance to be staged in the agency's geographic service area and allows healthcare facilities to request that any licensed agency conduct a non-emergency transport if an agency licensed for a specific geographic service area is unable to respond to the non-emergency call within two (2) hours from the initial time the call is received.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary (1) to provide the Board a mechanism to temporarily suspend Class I, II, III, VI, and VII licenses if an agency fails to surrender its license after ceasing continuous service; (2) to provide the Board a mechanism to issue temporary Class I hardship licenses to counties that could otherwise be left without any Class I emergency ambulance service; and (3) to ensure timely responses to non-emergency calls. Additionally, this amendment is necessary to ensure Class I agencies schedule a minimum of one (1) staffed ambulance to be staged in the agency's geographic service area.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 311A.020 and 311A.030 by establishing licensure requirements and minimum response times for ambulance providers and medical first response agencies.

(d) How the amendment will assist in the effective administration of the statutes: KRS 311A.020 requires the Board of Emergency Medical Services to exercise all administrative functions in the regulation of the EMS system and the licensing of ambulance services and medical first response agencies, except those regulated by the Board of Medical Licensure or the Cabinet for Health and Family Services. KRS 311A.030 requires the Board to promulgate administrative regulations for the licensing, inspection, and regulation of ambulance providers and medical first response agencies. This amendment will assist in the effective administration of those statutes by establishing licensure requirements and minimum response times for ambulance providers and medical first response agencies.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The public, all ambulance services, medical first response agencies, counties, and many healthcare facilities will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Chief Operations or Service Director of a Class I, II, III, VI, or VII agency must contact the Executive Director of the Board upon determining that his or her agency will cease providing continuous service, and must provide the approximate date and time that the agency will cease continuous service. The Chief Operations or Service director must also contact the Executive Director upon determining that his or her agency has ceased providing continuous service, and must provide the date and time that the agency ceased continuous service. Class I, II, III, VI, and VII agencies will be required to surrender their licenses within 24 hours after ceasing continuous service unless the agency can demonstrate to the Executive Director that (1) circumstances beyond the agency's control exist which justify the agency's temporary cessation of continuous service and (2) public health, safety, and welfare will be better served by allowing the agency to resume continuous service within 72 hours after ceasing continuous service. If the Executive Director makes the above-listed determinations, the agency must resume continuous service no later than 72 hours after ceasing continuous service.

Counties issued a temporary Class I hardship license will be required to begin providing continuous service no later than 120 days after the license is issued.

Class I agencies will be required to schedule a minimum of one (1) staffed ambulance to be staged in the agency's geographic service area.

Ambulance services and medical first response agencies will be required to meet the minimum response times established by 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): Counties issued a temporary Class I hardship license under this amendment may incur costs by providing Class I ambulance services or contracting with a Class I ambulance service.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Counties and the public will benefit from counties being able to provide Class I ambulance services under a temporary Class I hardship license after the Class I agency serving the county or counties has surrendered its license or its license has been temporarily suspended. The public will benefit from having a Class I ambulance staged in the agency's geographic service area. Healthcare facilities will benefit from being able to request that any licensed agency respond to non-emergency calls if an agency licensed for the geographic service area cannot respond within two (2) hours after the call is initially received.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There will be no additional cost to the administrative body to implement this administrative regulation.

(a) Initially: There will be no additional cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the administrative body to implement this administrative regulation.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The Board's general appropriations will be used to implement and enforce this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation because this amendment applies to all ambulance services and medical first response agencies.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The administrative regulation will affect counties, ambulance services, and medical first response agencies.

(2) Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311A.020 requires the Board of Emergency Medical Services to exercise all administrative functions in the regulation of the EMS system and the licensing of ambulance services and medical first response agencies, except those regulated by the Board of Medical Licensure or the Cabinet for Health and Family Services. KRS 311A.030 requires the Board to promulgate administrative regulations for the licensing, inspection, and regulation of ambulance providers and medical first response agencies.

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? Administration of this administrative regulation will not require any additional costs.

(d) How much will it cost to administer this program for subsequent years? Administration of this administrative regulation will not require any additional costs.

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

Revenues (+/-): This administrative regulation will not generate revenue.

Expenditures (+/-): This administrative regulation will not require any additional expenditures.

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation will not generate any cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation will not generate any cost savings.

(c) How much will it cost the regulated entities for the first year? This administrative regulation will not impose any costs.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation will not impose any costs.

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

Cost Savings (+/-): This administrative regulation will not generate any cost savings.

Expenditures (+/-): This administrative regulation will not impose any costs.

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. This administrative regulation will not have a major economic impact.

**STATEMENT OF EMERGENCY
900 KAR 6:080E**

This emergency administrative regulation is necessary to allow an ambulance service to begin operating in an area where ambulance services are no longer available without first obtaining a certificate of need if the affected county will qualify for and obtain a Class I hardship license from the Kentucky Board of Emergency Medical Services (KBEMS). This emergency administrative regulation is deemed to be an emergency pursuant to KRS 13A.190(1)(a)1. in order to meet an imminent threat to public health, safety, and welfare. The Cabinet for Health and Family Services has been notified that the ambulance agency serving Knott County intends to cease operation in June 2023, and the ambulance agency serving Lewis County continues to provide service in the short-term but may terminate its contract with a thirty (30) day notice, potentially leaving the county with an abrupt loss of services. There is an ongoing shortage of ambulance services available across the Commonwealth due to financial demands and workforce shortages. Under current regulations, a new ambulance service would be required to apply for a certificate of need before it could begin operation, which is a lengthy process that can take six (6) months to a year. The current version of this emergency regulation establishes the eligibility requirements and process to allow certificate-of-need-covered health services to be provided to alleviate an emergency circumstance without requiring the provider to first obtain a certificate of need. This emergency amendment would expand eligibility to include a county where an ambulance service has surrendered its license or had its license suspended by KBEMS and the county seeks a temporary Class I hardship license from KBEMS to operate or contract with a licensed agency to provide ambulance services. This will allow an ambulance provider to quickly begin serving an area where continuous ambulance services have ceased without waiting months to obtain a certificate of need. This emergency administrative regulation will be replaced by an identical ordinary administrative regulation. This emergency regulation will be filed in conjunction with an emergency amendment to 202 KAR 7:555 by KBEMS, which will create a temporary Class I hardship license for emergency situations. Both regulations will work together to help counties avoid an interruption in ambulances services and protect the health, safety, and welfare of their residents.

ANDY BESHEAR, Governor
CARRIE BANAHAHAN, Deputy Secretary

**CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Certificate of Need
(Emergency Amendment)**

900 KAR 6:080E. Certificate of Need emergency circumstances.

EFFECTIVE: May 19, 2023

RELATES TO: KRS 216B.015, 216B.020, 216B.061, 216B.990

STATUTORY AUTHORITY: KRS 194A.030(1)(c)4., 216B.040(2)(a)1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes the guidelines for alleviating an emergency circumstance for the orderly administration of the Certificate of Need Program.

Section 1. Definitions.

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

(2) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Office of Inspector General, Division of Certificate of Need Web site at <https://chfs.ky.gov/agencies/os/oig/dcn>.

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

(4) "Emergency circumstance" means a situation that poses an imminent threat to the life, health, or safety of a citizen of the commonwealth, including a situation in which a ground ambulance provider ceases to provide continuous services in its geographic service area in accordance with 202 KAR 7:555, Section 4.

(5) "Office of Inspector General" means the office within the Cabinet for Health and Family Services that is responsible for licensing and regulatory functions of health facilities and services.

(6) "Public notice" means notice given through:

(a) The Web site of the Office of Inspector General, Division of Certificate of Need at <https://chfs.ky.gov/agencies/os/oig/dcn>; or

(b) The cabinet's Certificate of Need Newsletter.

(7) "Service area" means county unless otherwise specified in the state health plan.

(8) "State Health Plan" is defined by KRS 216B.015(28) and is incorporated by reference in 900 KAR 5:020.

Section 2. Emergency Circumstances.

(1) If an emergency circumstance arises, a person may proceed to alleviate the emergency without first obtaining a certificate of need if:

(a) The person is licensed by the Office of the Inspector General or the Kentucky Board of Emergency Medical Services to provide the same or similar services necessary to alleviate the emergency;

(b) The Office of Inspector General, Division of Certificate of Need, is notified in writing within five (5) days of the commencement of the provision of the service required to alleviate the emergency; and

(c) The Office of Inspector General, Division of Certificate of Need, acknowledges in writing that it recognizes that an emergency does exist.

(2) The notice to the Office of Inspector General, Division of Certificate of Need, shall be accompanied by an affidavit and other documentation from the person proposing to provide emergency services that shall contain the following information:

(a) A detailed description of the emergency that shall include at least the following information:

1. a. A description of health care services that will be provided to the person or persons to whom the services will be provided, including proof of eligibility for the service; or

b. An attestation from a county government that it intends to seek a temporary Class I hardship license from the Kentucky Board of Emergency Medical Services pursuant to 202 KAR 7:555, Section 5;

2. A list of the providers in the service area licensed to provide the services that will be provided during the emergency, unless the situation involves a previously licensed ground ambulance provider that ceases to provide continuous services in its geographic service area; and

3. Proof that:

a. Other providers licensed in the service area to provide the service are aware of the need for the service to be provided to the person and have refused or are unable to provide the service; ~~or~~

b. Circumstances exist under which the transfer of a patient to another provider licensed in the service area to provide the service would present an unacceptable risk to a patient's life, health, or safety; or

c. A previously licensed ground ambulance provider ceases to provide continuous services in its geographic service area;

(b) The steps taken to alleviate the emergency;

(c) The location or geographic service area where the emergency service is being provided; and

(d) The expected duration of the emergency.

(3) The Office of Inspector General, Division of Certificate of Need, may request additional information necessary to make its determination from the person proposing to provide emergency services before it acknowledges that an emergency circumstance does exist.

(4) Except for a temporary Class I hardship license issued under 202 KAR 7:555, Section 5, if the provision of service to meet the emergency circumstance is required to continue beyond sixty

(60) days from the date that the notice is filed with the cabinet, the person providing the emergency service shall file the appropriate application for a certificate of need, which is incorporated by reference in 900 KAR 6:055, for the next appropriate public notice pursuant to 900 KAR 6:060. Failure to submit an application to the Office of Inspector General, Division of Certificate of Need, shall result in the rescission of the emergency acknowledgement and generate notification to the Office of Inspector General, Division of Health Care.

(5) The person providing the emergency service may continue to alleviate the emergency circumstances without a certificate of need until:

(a) The emergency circumstance ceases to exist; ~~or~~

(b) The cabinet issues a final decision to approve or disapprove the application for certificate of need; or

(c) Expiration of the temporary Class I hardship license issued under 202 KAR 7:555, Section 5.

(6) The person providing the emergency service shall notify the Office of Inspector General, Division of Certificate of Need, within ten (10) days of the date the emergency circumstance ceases and emergency services are no longer required.

ADAM MATHER, Inspector General
CARRIE BANAHAN, Deputy Secretary

APPROVED BY AGENCY: May 10, 2023

FILED WITH LRC: May 12, 2023 at 3:54 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 24, 2023, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by July 17, 2023, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until July 31, 2023. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kara Daniel; Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process for addressing emergency circumstances as part of the certificate of need process.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.040(2)(a).1., which requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to establish the certificate of need review procedures, including applications, notice, review for completeness, and review cycle timetables.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.040 by establishing procedures for the certificate of need process.

(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 review procedures for the certificate of need process

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

(a) How the amendment will change this existing administrative regulation: This amendment provides the cabinet with a mechanism that will allow a county to alleviate an emergency circumstance without first obtaining a certificate of need if continuous ambulance services have ceased in the area and the county seeks a temporary Class I hardship license from the Kentucky Board of Emergency Medical Services (KBEMS).

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide the cabinet with a mechanism to allow a county to alleviate an emergency circumstance without first obtaining a certificate of need in a county or counties that would otherwise be left without any Class I ambulance service.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 216B.040 because it establishes procedures for the certificate of need process.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: A county or counties in which ground ambulance services have ceased will be affected by this amendment, which is intended to minimize interruptions in continuous ambulance services.

(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: Counties seeking a temporary Class I hardship license from KBEMS must comply with the procedures set forth in this administrative regulation in order to begin providing services without first obtaining a certificate of need if an emergency circumstance exists.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Counties issued a temporary Class I hardship license by KBEMS under 202 KAR 7:555E may incur costs by providing Class I ambulance services or contracting with a Class I ambulance service. However, counties will not incur any costs under this amendment to 900 KAR 6:080E.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky's citizens will benefit from counties being able to provide ambulance services under a temporary Class I hardship license after a Class I agency that previously served the county or counties has surrendered its license or had its license suspended by KBEMS.

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

(a) Initially: There are no additional costs to the Office of Inspector General for implementation of this amendment.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds and agency monies are used to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities authorized to provide services to alleviate an emergency without first obtaining a certificate of need.

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 is not expected to have a major economic impact on the regulated entities.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Cabinet for Health and Family Services, Office of Inspector General, and any county that seeks to provide ambulance services without a certificate of need due to emergency circumstances.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(1)(c)4. and 216B.040(2)(a)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 amendment will not generate additional revenue for state or local government.

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

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

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

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

Revenues (+/-): See response above.

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

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation will not generate cost savings for regulated entities during the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation will not generate cost savings for regulated entities during subsequent years.

(c) How much will it cost the regulated entities for the first year? This administrative regulation imposes no additional costs on regulated entities.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation imposes no additional costs on regulated entities during 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

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Health Care Policy
(Emergency Amended After Comments)

907 KAR 1:632E. Vision program coverage provisions and requirements.

EFFECTIVE: June 13, 2023

Prior versions:

Emergency Amendment - 49 Ky.R. 2069

Emergency As Amended at ARRS – 49 Ky.R. 2268

RELATES TO: KRS 205.520, 205.622, 205.8451(7), (9), Chapter 320, Chapter 326, 326.030, 326.040, 369.101 to 369.120, 42 C.F.R. 400.203, 431.17, 438.2, 440.40, 440.60, 447 Subpart B, [42 U.S.C. 1396a-d], 45 C.F.R. 147.126, Parts 160 and 164, 164.306, 164.316, 42 U.S.C. 1320d to 1320d-8, 1396a-d

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 441.30, 42 C.F.R. 441.56(c)(1)

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 Kentucky Medicaid Program provisions and requirements regarding the coverage of vision services.

Section 1. Definitions.

(1) "Current procedural terminology code" or "CPT code" means a code used for reporting procedures and services performed by medical practitioners and published annually by the American Medical Association in Current Procedural Terminology.

(2) "Department" means the Department for Medicaid ~~Services~~[~~Services~~] or its designee.

(3) "Enrollee" means a recipient who is enrolled with a managed care organization.

(4) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(5) "Healthcare Common Procedure Coding System" or "HCPCS" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services (CMS) that represents procedures or items.

(6) "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.

(7) "Medicaid basis" means a scenario in which:

(a) A provider provides a service to a recipient as a Medicaid-participating provider in accordance with:

1. 907 KAR 1:671; and
2. 907 KAR 1:672;

(b) The Medicaid Program is the payer for the service; and

(c) The recipient is not liable for payment to the provider for the service[~~other than any cost sharing obligation owed by the recipient to the provider~~].

(8) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(9) "Ophthalmic dispenser" means an individual who is qualified to engage in the practice of ophthalmic dispensing in accordance with KRS 326.030 or 326.040.

(10) "Optometrist" means an individual who is licensed as an optometrist in accordance with KRS Chapter 320.

(11) "Provider" is defined by KRS 205.8451(7).

(12) "Recipient" is defined by KRS 205.8451(9).

Section 2. General Requirements and Conditions of Participation.

(1)(a) For the department to reimburse for a vision service or item, the service or item shall be:

1. Provided:

- a. To a recipient; and
- b. By a provider who is:

(i) Enrolled in the Medicaid Program pursuant to 907 KAR 1:672;

(ii) Except as provided in paragraph (b) of this subsection, currently participating in the Medicaid Program pursuant to 907 KAR 1:671; and

(iii) Authorized by this administrative regulation to provide the given service or item;

2. Covered in accordance with this administrative regulation;

3. Medically necessary;

4. A service or item authorized within the scope of the provider's licensure; and

5. A service or item listed on the Kentucky Medicaid Vision Fee Schedule[~~Department for Medicaid Services Vision Program Fee Schedule~~].

(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 recognized as an authorized provider of vision services, an optometrist shall:

1. Be licensed by the:

- a. Kentucky Board of Optometric Examiners; or
- b. Optometric examiner board in the state in which the optometrist practices if the optometrist practices in a state other than Kentucky;

2. Submit to the department proof of licensure upon initial enrollment in the Kentucky Medicaid Program; and

3. Annually submit to the department proof of licensure renewal including the expiration date of the license and the effective date of renewal.

(b)1. To be recognized as an authorized provider of vision services, an in-state optician shall:

- a. Hold a current license in Kentucky as an ophthalmic dispenser;
- b. Comply with the requirements established in KRS Chapter 326;

c. Submit to the department proof of licensure upon initial enrollment in the Kentucky Medicaid Program; and

d. Annually submit to the department proof of licensure renewal including the expiration date of the license and the effective date of renewal.

2. To be recognized as an authorized provider of vision services, an out-of-state optician shall:

- a. Hold a current license in the state in which the optician practices as an ophthalmic dispenser;
- b. Submit to the department proof of licensure upon initial enrollment in the Kentucky Medicaid Program; and

c. Annually submit to the department proof of licensure renewal including the expiration date of the license and the effective date of renewal.

(c) A physician shall be an authorized provider of vision services.

(3) A provider shall comply with:

- (a) 907 KAR 1:671;
- (b) 907 KAR 1:672;
- (c) All applicable state and federal laws; and

(d) The confidentiality of personal records pursuant to 42 U.S.C. 1320d-8 and 45 C.F.R. Parts 160 and 164.

(4)(a) A provider shall:

1. Have the freedom to choose whether to provide services to

a recipient; and

2. Notify the recipient referenced in paragraph (b) of this subsection of the provider's decision to accept or not accept the recipient on a Medicaid basis prior to providing any services to the recipient.

(b) A provider may provide a service to a recipient on a non-Medicaid basis:

1. If the recipient agrees to receive the service on a non-Medicaid basis; and

2. The service is not a Medicaid covered service~~Whether or not the:~~

- a. ~~Provider is a Medicaid-participating provider; or~~
- b. ~~Service is a Medicaid-covered service~~].

Section 3. Vision Service Coverage.

(1) Vision service coverage shall be limited to a service listed with a CPT code or item with an HCPCS code on the Kentucky Medicaid Vision Fee Schedule as available at: <https://www.chfs.ky.gov/agencies/dms/Pages/feesrates.aspx>~~Department for Medicaid Services Vision Program Fee Schedule~~].

(2) Vision service limits shall be as established on the Kentucky Medicaid Vision Fee Schedule as available at: <https://www.chfs.ky.gov/agencies/dms/Pages/feesrates.aspx>~~Department for Medicaid Services Vision Program Fee Schedule~~].

(3) Vision service limits may be exceeded by prior authorization for children under twenty-one (21) if medically necessary.

Section 4. Coverage of Eyeglasses and Frames.

(1) To be eligible for eyeglasses covered by the department, a recipient shall [:

(a) ~~Be under the age of twenty-one (21) years, including the month in which the recipient becomes twenty-one (21) years of age; and~~

(b)] have a diagnosed visual condition that:

- (a)[1:] Requires the use of eyeglasses;
- (b)[2:] Is within one (1) of the following categories:
 - 1.[a.] Amblyopia;
 - 2.[b.] Post surgical eye condition;
 - 3.[c.] Diminished or subnormal vision; or
 - 4.[d.] Other diagnosis which indicates the need for eyeglasses;

and

(c)[3:] Requires a prescription correction in the stronger lens no weaker than:

- 1.[a.] +0.50, 0.50 sphere +0.50, or 0.50 cylinder;
- 2.[b.] 0.50 diopter of vertical prism; or
- 3.[c.] A total of two (2) diopter of lateral prism.

(2) Provisions regarding any limit on the number of eyeglasses covered shall be as established in 907 KAR 1:631.

(3) For the department to cover:

- (a) A frame, the frame shall be:
 - 1. First quality;
 - 2. Free of defects; ~~and~~
 - 3. ~~Deluxe; and~~
 - 4. Have a manufacturer warranty of at least one (1) year; or
- (b) A lens, the lens shall be:
 - 1. First quality;
 - 2. Free of defects;
 - 3. Meet the United States Food and Drug Administration's impact resistance standards; ~~and~~
 - 4. Polycarbonate and scratch coated; ~~and~~
 - 5. If medically necessary, inclusive of prisms.
- (4) The dispensing of eyeglasses shall include:
 - (a) Single vision prescriptions;
 - (b) Bi-focal vision prescriptions;
 - (c) Multi-focal vision prescriptions;
 - (d) Progressive lens prescriptions;
 - (e) Services to frames; or
 - (f)[(e)] Delivery of the completed eyeglasses which shall include:

- 1. Instructions in the use and care of the eyeglasses; and
- 2. Any adjustment, minor or otherwise, for a period of one (1) year.

(5) A provider shall be responsible, at no additional cost to the department or the recipient, for:

- (a) An inaccurately filled prescription;
- (b) Defective material; or
- (c) An improperly fitted frame.

Section 5. Contact Lenses, Tint, and Plano Safety Glasses.

(1) The department shall ~~not~~reimburse for contact lenses substituted for eyeglasses if a medical indication prevents the use of eyeglasses~~unless:~~

- (a) ~~The corrected acuity in a recipient's stronger eye is twenty (20)/fifty (50) and shall be improved with the use of contact lenses;~~
- (b) ~~The visual prescription is of + 8.00 diopter or greater; or~~
- (c) ~~The recipient's diagnosis is 4.00 diopter anisometropia.]~~
- (2) The department's reimbursement for contact lenses shall include disposable daily contact lenses.

(3) The department shall not reimburse for tint unless the prescription specifically indicates a diagnosis of photophobia.

(4)[(3)] The department shall not reimburse for plano safety glasses unless the glasses are medically indicated for the recipient.

Section 6. Noncovered Services or Items. The department shall not reimburse for:

- (1) Tinting if not medically necessary;
- (2) Photochromics if not medically necessary;
- (3) Anti-reflective coatings if not medically necessary;
- (4) Other lens options which are not medically necessary;
- (5) Low vision services;
- (6) A press-on prism if not medically necessary; or
- (7) A service with a CPT code or item with an HCPCS code that is not listed on the Kentucky Medicaid Vision Fee Schedule~~Department for Medicaid Services Vision Program Fee Schedule~~].

Section 7. Required Provider Documentation. (1)(a) In accordance with 42 C.F.R. 431.17, a provider shall maintain medical records of a service provided to a recipient for the period of time currently required by the United States Health and Human Services Secretary unless the department requires a retention period, pursuant to 907 KAR 1:671, longer than the period required by the United States Health and Human Services Secretary.

(b) If, pursuant to 907 KAR 1:671, the department requires a medical record retention period longer than the period required by the United States Health and Human Services Secretary, the medical record retention period established in 907 KAR 1:671 shall be the minimum record retention period.

(c) A provider shall maintain medical records of a service provided to a recipient in accordance with:

- 1. 45 C.F.R. 164.316; and
- 2. 45 C.F.R. 164.306.

(2) A provider shall maintain the following documentation in a recipient's medical record:

- (a) Any covered service or covered item provided to the recipient;
- (b) For each covered service or covered item provided to the recipient:
 - 1. A signature by the individual who provided the service or item signed on the date the service or item was provided;
 - 2. The date that the service or item was provided; and
 - 3. Demonstration that the covered service or covered item was provided to the recipient;
- (c) The diagnostic condition necessitating the service or item; and
- (d) The medical necessity as substantiated by an appropriate medical order.

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 speech-language pathology service from a speech-language pathologist enrolled

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with the Medicaid Program, the department shall not reimburse for the same service provided to the same recipient during the same time period via the physician services program.

Section 9. Third Party Liability. A provider shall comply with KRS 205.622.

Section 10. Auditing Authority. The department shall have the authority to audit any claim, medical record, or documentation associated with the claim or medical record.

Section 11. 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 12. 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 13. Appeal Rights. An appeal of a department decision regarding a Medicaid recipient who is:

(1) Enrolled with a managed care organization shall be in accordance with 907 KAR 17:010; or

(2) Not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

Section 14. Incorporation by Reference.

(1) "Kentucky Medicaid Vision Fee Schedule" ["Department for Medicaid Services Vision Program Fee Schedule"], April 2023 [May 13, 2014], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. or online at the department's Web site at <https://www.chfs.ky.gov/agencies/dms/Pages/feesrates.aspx> [<http://www.chfs.ky.gov/dms/incorporated.htm>].

Section 15. This administrative regulation has been found deficient by the Administrative Regulation Review Subcommittee on May 9, 2023.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 12, 2023

FILED WITH LRC: June 13, 2023 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: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Medicaid program coverage policies and requirements regarding vision services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid program coverage provisions and requirements regarding vision 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 Medicaid program coverage provisions and requirements regarding vision services.

(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 Medicaid program coverage provisions and requirements regarding vision services; by complying with a federal mandate; and by protecting Kentucky taxpayer monies from being spent if federal matching funds are not provided.

(2) If 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 the administrative regulation by implementing a state plan amendment that allows for adults to receive vision services. The amendment also clarifies cost sharing requirements, how providers can deliver services on a non-Medicaid basis, requires a higher quality of frame, lens, and lens enhancements to be available to Medicaid recipients. In addition, clarification is made that contact lenses are covered and that daily contact lenses will be available to Medicaid recipients. Finally, updated references to the department's vision fee schedule are included. The Amended After Comments version of the administrative regulation changes the term "daily contact lenses" to "disposable contact lenses" to allow providers additional flexibility in treating patients. In addition, the word "manufacturer" is now included in order to clarify the expected level of quality for eyeglass frames.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the administrative regulation to reflect current vision policy, and to implement the approval of recent state plan amendments.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by implementing a state plan amendment and updating the administrative regulation to conform to recent statutory and regulatory updates to the Medicaid program.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists in the effective administration of the statutes by providing a periodic update of the vision program, and to implement recently effective state plan amendments, administrative regulations, and statutes.

(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 all adult and children recipients in the Medicaid program by enhancing the quality of vision products that can be offered to recipients. There are currently 1.7 million individuals in the Medicaid program. The adult population that is newly eligible could include as many as 900,000 individuals from the traditional and expansion Medicaid populations. In addition, this administrative regulation will affect vision service providers participating in the Kentucky 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 of the regulated entities other than to properly bill for services and adhere to program integrity requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individual beneficiaries will benefit from access to vision services, such as eyeglasses and contact lenses. Vision services providers will benefit from the opportunity to provide services to an additional population of Medicaid beneficiaries.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates an increase of about \$0.75 for each adult beneficiary's per member per month capitation (PMPM) managed care organization (MCO) capitation rate. This upfront expenditure should be balanced against expected savings that could be generated within the Medicaid adult population. Consistent with national trends, DMS expects that Medicaid vision coverage will increase the likelihood of working full-time for adult beneficiaries. This could result in individuals leaving the Medicaid program as a result of receiving full-time employment. The department – due to the efficiencies created – will meet its budgetary requirements as established in House Bill 1 of the 2022 Regular Session.

(b) On a continuing basis: DMS anticipates that movement out of the Medicaid program will intensify in future years. DMS further anticipates that the preventive care will reduce later utilization. The department will revisit the PMPM for this service category with contracted actuaries prior to making future budget requests.

(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, state matching funds, 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: No increase in funding will be necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is no longer applied within this administrative regulation as vision services are now available to all Medicaid recipients.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(30)(A), 42 U.S.C. 1396a(a)(33), 42 C.F.R. 441.56(c)(1), 42 C.F.R. 441.30, Section 2711 of the Affordable Care Act, and 45 C.F.R. 147.126.

(2) State compliance standards. Vision services for Medicaid recipients are not mandated by Kentucky law; however, the Department for Medicaid Services is required by KRS 205.8453 to "institute other measures necessary or useful in controlling fraud and abuse." KRS 205.520(3) states: "... 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. Coverage of vision services is mandated only for certain children within the early and periodic screening, diagnosis and treatment (EPSDT) program for individuals under age twenty-one

(21). 42 C.F.R. 441.30 states, "The plan must provide for payment of optometric services as physician services, whether furnished by an optometrist or a physician, if— (a) The plan does not provide for payment for services provided by an optometrist, except for eligibility determinations under §§435.531 and 436.531 of this subchapter, but did provide for those services at an earlier period; and (b) The plan specifically provides that physicians' services include services an optometrist is legally authorized to perform." Additionally, state Medicaid programs are required to take measures to monitor that services are appropriate. States are required to establish a plan for review of the appropriateness and quality of care and services furnished to Medicaid recipients by appropriate health care professionals. The plan helps protect against overutilization or unnecessary care and to assure that reimbursement is consistent with efficiency, economy and quality of care. 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to:

"... provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services. ... " 45 C.F.R. 147.126 prohibits the application of annual dollar limits on essential health benefits. Medicaid program benefits are included in the scope of essential health benefits.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter requirements are not imposed.

FISCAL NOTE

(1) What 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 administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 441.30, 42 C.F.R. 441.56(c)(1), and 45 C.F.R. 147.126.

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

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

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

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates an increase of about \$0.75 for each adult beneficiary's per member per month capitation (PMPM) managed care organization (MCO) capitation rate. This up-front expenditure should be balanced against expected savings that could be generated within the Medicaid adult population. Consistent with national trends, DMS expects that Medicaid vision coverage will increase the likelihood of working full-time for adult beneficiaries. This could result in individuals leaving the Medicaid program as a result of receiving full-time employment. The department – due to the efficiencies created – will meet its budgetary requirements as established in House Bill 1 of the 2022 Regular Session.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates that movement out of the Medicaid program will intensify in future years. DMS further

anticipates that the preventive care will reduce later utilization. The department will revisit the PMPM for this service category with contracted actuaries prior to making future budget requests.

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 anticipates cost savings for vision services providers who will be able to receive Medicaid reimbursement for a previously uncovered population of 900,000 people. The vision services providers would have previously sought private pay reimbursement for these services and many recipients may have not accessed services as a result. In addition, other services – such as higher quality eyeglasses and daily contacts - are now available to the entirety of the Medicaid population. This will provide a stable source of funding for these services.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? DMS anticipates cost savings on an ongoing basis for vision services providers because expanded services, and higher quality products will now be from a more stable funding source.

(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 anticipates that this amendment may result in additional reimbursement for ophthalmologists and optometrists.

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

GENERAL GOVERNMENT CABINET
Auditor of Public Accounts
(As Amended at ARRS, June 13, 2023)

45 KAR 1:040. Audits of county fee officials.

RELATES TO: KRS 43.070, 43.075, 64.530, ~~[64.530,]~~64.810, 68.210

STATUTORY AUTHORITY: KRS 43.075

NECESSITY, FUNCTION, AND CONFORMITY: KRS 43.075 requires the Auditor of Public Accounts to promulgate administrative regulations developing uniform standards and procedures for conducting, and uniform formats for reporting, audits of counties and elected county officials. This administrative regulation establishes the auditing standards, procedures, and formats for county fee officials' audits.

Section 1. Definition. "Generally accepted government auditing standards" means the ~~[""]~~Government Auditing Standards~~[""]~~ issued by the Comptroller General of the United States.

Section 2. Auditing Standards, Procedures, and Formats. The financial and compliance audit of the funds administered by each county fee official shall be conducted and reported in accordance with:

(1) ~~Generally accepted auditing standards~~~~[Auditing standards generally accepted in the United States of America]~~, referenced in 201 KAR 1:290~~[201 KAR 1:300, Section 5(1)(a)]~~;

(2) Generally accepted government auditing standards, referenced in 201 KAR 1:290~~[201 KAR 1:300, Section 5(1)(b)]~~; and

(3) The "Audit Program for County Fee Officials," issued by the Auditor of Public Accounts, February 13, 2023~~[July 1, 2017]~~.

Section 3. Auditor's Independent ~~Judgment~~~~[Judgement]~~~~[Judgment]~~. The requirements of this administrative regulation shall not be interpreted in a manner that restricts the independent judgment of a certified public accountant or the Auditor of Public Accounts.

Section 4. Audit Objective.

(1) The primary objective of an audit of a fee official shall be an audit report that provides an opinion on whether the financial statements of the fee official present fairly, in all material respects, the receipts, disbursements, and excess fees.

(2) An auditor shall make tests sufficient to determine whether:

(a) The fee official has complied with the requirements of the uniform system of accounts adopted under KRS 64.530 ~~and~~ ~~64.530 and~~ ~~68.210~~;

(b) Receipts have been accurately recorded by source;

(c) Expenditures have been accurately recorded by payee; and

(d) The fee official has complied with all other legal requirements relating to the management of public funds by his or her office.

Section 5. Allowance of Audit Fees; Acceptance of Report.

(1) Fees for county fee officials' audits shall be allowable as reasonable and necessary expenses of a county or county fee official if the independent accountant's audit has been performed and reported in compliance with the standards, procedures, and formats promulgated by this administrative regulation.

(2) A fee official shall obtain written approval of an audit report from the Auditor of Public Accounts prior to the:

(a) Release of an audit report; and

(b) Payment of fees for a fee ~~official's~~~~[officials']~~ audit.

(3) Failure by an independent certified public accountant to comply with the ~~[""]~~Audit Program for County Fee Officials~~[""]~~ and this administrative regulation, shall disqualify him ~~[or her]~~ from

conducting fee officials' audits.

Section 6. Incorporation by Reference.

(1) The "Audit Program for County Fee Officials," Auditor of Public Accounts, February 13, 2023~~[July 1, 2017]~~ is incorporated by reference.

(2) This document may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Auditor of Public Accounts, 209 Saint Clair Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5:00 p.m. or online at <https://www.auditor.ky.gov/cpatools/Pages/adminregs.aspx>.

CONTACT PERSON: Graham Gray, General Counsel, Auditor of Public Accounts, 209 St. Clair Street, Frankfort, Kentucky 40601; phone 502-209-2870; fax 502-564-2912; e-mail Graham.Gray@ky.gov.

GENERAL GOVERNMENT CABINET
Department for Local Government
(As Amended at ARRS, June 13, 2023)

109 KAR 17:010. County attorney annual settlement.

RELATES TO: KRS 69.370, 64.830

STATUTORY AUTHORITY: KRS 69.370(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 69.370(3) requires the Department for Local Government to promulgate administrative regulations under KRS Chapter 13A to provide standardized forms for a county attorney in preparing the settlements required under this section and KRS 64.830.

Section 1. Applicability. Beginning on July 1, 2023, a county attorney currently in office shall annually file the County Attorney Settlement Form~~[an annual settlement]~~, as required by KRS 69.370~~[Chapter 69]~~.

Section 2. Incorporation by Reference.

(1) The "County Attorney Settlement Form", March 2023, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Local Government, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. or at https://kydlqweb.ky.gov/Articles/16_articleView.cfm?NewsID=861.

CONTACT PERSON: Matt Stephens, Executive Director, Department for Local Government, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601; phone 502-564-0318; email Matt.Stephens@ky.gov.

BOARDS AND COMMISSIONS
State Board of Accountancy
(As Amended at Interim Joint Committee on Licensing, Occupations, and Administrative Regulations, June 22, 2023)

201 KAR 1:190. Examination sections, applications, and procedures.

RELATES TO: KRS 325.270, 325.261

STATUTORY AUTHORITY: KRS 325.240(2), 325.270(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.240(2) authorizes the board to promulgate administrative regulations to administer KRS Chapter 325. KRS 325.270(1) and (2) require the board to authorize examinations for individuals

seeking to become certified public accountants and authorize the board to, by administrative regulation, promulgate standards and fees governing all examination policies and procedures. KRS 325.261(4) requires passage of an examination prior to a person becoming licensed as a certified public accountant and for the board to determine the subjects to be included on the examination. This administrative regulation establishes the subjects, also referred to as sections, to be included on the examination, and the procedures and fees associated with the administration of the examination.

Section 1. Definitions.

(1) "Accounting course" means the subject matter contained in the course description or catalog issued by a college or university that includes auditing, tax, accounting standards, principles, or processes.

(2) "AICPA" means the American Institute of Certified Public Accountants, the entity that prepares and grades the Uniform CPA Examination.

(3) "Business-related subjects" means courses that contain in the course prefix or title, an indication that the course subject matter is one (1) of the following: business, finance, marketing, management, economics, computers, statistics, or accounting.

(4) "CLEP credit" means credit granted by a university or college to a prospective student who obtains a passing score on an exam administered through the College Level Examination Program.

(5) "DSST credit" means credit granted by a university or college to a prospective student who obtains a passing score on an exam administered through the Dantes Subject Standardized Testing program.

(6) "Life assessment course" means a course in which a student earns credit at a university or college based upon the student's personal life and work experiences.

(7) "Major or concentration in accounting" means a minimum of thirty-nine (39) semester hours in business-related subjects, of which twenty-seven (27) semester hours consist of accounting courses.

(8) "NASBA" means the National Association of State Boards of Accountancy, which operates a nationwide computer data bank for candidates applying to sit for the Uniform CPA Examination.

(9) "Official transcript" means an official document issued by a college or university that:

(a) States the college course work completed, degrees awarded, and the date the degree was awarded; and

(b) Contains an authorizing signature or seal.

(10) "Prometric or its successor" means the testing service in charge of administering the Uniform CPA Examination.

(11) "Quarter hour" means 66/100ths of a semester hour.

(12) "Uniform CPA Examination" means the computer-based version of the licensure examination administered by the AICPA.

Section 2. Examination. The board shall use the Uniform CPA Examination prepared by the AICPA as the examination every candidate seeking to receive a license shall sit for and obtain a passing grade for licensure.

Section 3. Grading Procedures and Acquiring Credit for Obtaining a Passing Score.

(1) An exam candidate shall receive a passing score on all sections of the examination to be eligible to receive a license.

(2) The passing score shall be seventy-five (75) on each section.

(3) An exam candidate shall not sit for the same section of the examination until after the candidate receives a score for that section.

(4) If an exam candidate initially receives a passing score on a section of the Uniform CPA Examination, the candidate shall have an eighteen (18) month[s] period in which to obtain a passing score on the remaining sections of the examination. The eighteen (18) month period shall begin on the date that the first passing score is released by NASBA and concludes on the date the candidate sits for the final test section passed, regardless of when the score for

that final test section is released following the last day of the month of the administration of that examination section to obtain a passing score on the remaining sections of the examination].

(a) Failure to receive a passing score on the remaining sections of the examination within the eighteen (18) months shall result in the expiration of the initial passing score, but not other sections passed during that eighteen (18) month period.

(b) All sections of the examination shall be passed during an eighteen (18) month time period for the candidate to be considered to have passed the examination.

(5) One (1) request to extend the time to retain passing scores beyond the time restrictions contained in this section shall be granted to a candidate. The extension shall expire the last day of the calendar quarter from the date the candidate sat for the exam

section. Additional extensions may be granted by the board, for good cause, upon a showing of circumstances beyond the candidate's control.

Section 4. Initial Examination Applicants.

(1) Initial examination application process.

(a) An initial examination applicant shall submit a complete, notarized Application for the Uniform CPA Examination.

(b) The applicant shall:

1. Indicate if the applicant has been convicted, plead guilty, entered an Alford plea, or a plea of no contest to a felony or misdemeanor, other than a minor traffic violation, and if so, submit with the application:

a. A copy of the judgment or sentence of conviction;

b. A criminal record check report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is dated within six (6) months of the date of the application, or a similar document from the out-of-state agency where the conviction was entered; and

c. A letter of explanation;

2. Indicate if the applicant has been denied admission to the Uniform CPA Examination, and if so, attach to the application a letter explaining the reason, date, and jurisdiction of the denial;

3. Indicate if the applicant has had disciplinary action taken against any professional license, and if so, attach to the application:

a. A letter indicating the jurisdiction and date of action;

b. A copy of all records associated with the action; and

c. An explanation of the circumstances; and

4. Submit an official transcript from each college or university that evidences completion of the educational requirements established in KRS 325.261, which includes a major or concentration in accounting. Course credit hours that are based upon a quarter hour system shall be converted to semester hours.

(c) An applicant requesting reasonable accommodations in testing due to a disability shall complete an Exam Applicant Special Accommodations Request Form supported by documentation no more than three (3) years old from a qualified examiner that shall include:

1. A diagnosis of the disability; and

2. Recommendation for the specific accommodations.

(d) The board shall not be responsible for the costs associated with obtaining the required documentation, but shall be responsible for the costs of reasonable accommodations that are provided to the applicant.

(e) The applicant shall submit a fee with the Application for the Uniform CPA Examination in the amount of:

1. Thirty (30) dollars for the application; and

2. Thirty (30) dollars for each section of the examination the applicant intends to take.

(f) Fees shall be nonrefundable and payment shall be in the form of a check or money order made payable to the Kentucky State Board of Accountancy. If the institution the check or money order is drawn on does not honor the check or money order, the application shall be incomplete and returned.

(2) Educational requirements.

(a) Educational requirements shall be completed at:

1. A college or university within the United States that was accredited by one (1) of the following accrediting associations

when the degree was granted:

- a. Middle States Association of Colleges and Schools;
- b. North Central Association of Colleges and Schools;
- c. New England Association of Schools and Colleges;
- d. Northwest Association of Schools, Colleges and Universities;
- e. Southern Association of Colleges and Schools;
- f. Western Association of Schools and Colleges; or

2. The board shall accept course credit hours awarded by a college or university after January 1, 2020 that is not accredited by one (1) of the associations listed in paragraph (a) 1. of this subsection, if those course credit hours receive credit from a college or university accredited by one (1) of the associations specified in paragraph (a) 1. of this subsection following the enrollment of the student in the accredited college or university. This exception does not apply to the course credits listed in subsection (3) of this section; or

3. A postsecondary educational institution outside the United States with course credits certified by a credentialing agency that is a member of the National Association of Credential Evaluation Services, Inc., or NASBA.

(b) The certification required by paragraph (a)3. of this subsection shall indicate:

1. That the foreign degree is equivalent to a baccalaureate or master's degree earned in an accredited United States college or university as established in KRS 325.261 and this administrative regulation;
2. That the applicant had a major or concentration in accounting;
3. The title of all courses completed by the applicant outside of the United States; and
4. The amount of credit awarded to the applicant for each course.

(c) The board may consult with a Kentucky state-funded, four (4) year institution of higher education for assistance in evaluating the hours earned and the accreditation of an educational institution under this subsection.

(3)(a) An applicant shall not receive credit toward satisfying the education requirements in KRS 325.261 and this administrative regulation for any credit hours awarded through a life assessment course or for DSST credit.

(b) An applicant who received CLEP credit, or credit hours from a college or university for completing an internship or co-op program may use a maximum of six (6) of those hours from each program for a total of twelve (12) hours solely toward satisfying the 150 hour requirement in KRS 325.261(5).

Section 5.(1)(a) The executive director of the board shall review all applications.

(b) If the executive director determines the application satisfies the requirements of this administrative regulation, the application shall be approved.

(c) If the executive director refuses to approve the application, it shall be submitted to the board for the board's review and consideration at its next regularly scheduled meeting.

(2) Applications approved by the executive director or the board shall be entered into the data bank operated by NASBA. NASBA shall then issue a payment coupon to the applicant that specifies the fees to be paid to NASBA, the AICPA, and Prometric to sit for the exam.

(3) Following payment of the required fees, NASBA shall issue a notice to schedule to the candidate, which states the candidate is eligible to contact Prometric or its successor to schedule a date and time to sit for the examination.

(4)(a) A candidate shall have six (6) months from the date of issuance by NASBA of a notice to schedule to sit for the sections of the examination approved by the executive director or the board.

(b) The notice to schedule shall expire when the candidate has sat for the sections approved by the executive director or the board, or at the conclusion of the six (6) month period, whichever comes first.

(c) A notice to schedule that is not expired may be extended if a candidate describes in writing that the extension is necessary

due to an emergency or a serious illness that will prohibit the candidate from sitting for a section of the exam prior to the conclusion of the six (6) month time period.

(d) To obtain approval to sit for additional sections of the examination, a candidate shall submit a reexam application as established in Section 9[40] of this administrative regulation.

(5)(a) The exam candidate shall pay all costs associated with sitting for the Uniform CPA Examination charged by NASBA, Prometric or its successor, and the AICPA.

(b) The costs shall be paid no later than ninety (90) days following the date of issuance of the payment coupon from NASBA.

(c) Failure to pay these fees prior to the end of the ninety (90) day time period shall result in the cancellation of the payment coupon and require the candidate to submit a reexam application accompanied by the appropriate fees.

Section 6. Examination Rules of Conduct.

(1) An examination candidate shall present two (2) forms of current and valid identification at the Prometric or its successor examination center. One (1) of these forms of identification shall be a state driver's license, a picture identification card issued by a state motor vehicle licensing agency, or a passport.

(2) The license or picture identification card shall be currently in effect and shall contain a photograph and signature.

(3) Failure to bring this identification to the examination center shall result in the candidate being prohibited from sitting for the examination.

(4) An examination candidate shall comply with all directives of the staff at the Prometric or its successor testing center and the rules of conduct in effect at the testing center.

(5) An examination candidate shall not:

- (a) Use written materials or mechanical aids inside or outside the examination room during the course of the examination;
- (b) Communicate with any person, other than the testing center staff, inside or outside the examination room, during the course of the examination;
- (c) Copy answers or allows his or her answers to be copied;
- (d) Substitute an individual in his or her place;
- (e) Disclose in any manner any information concerning the examination questions or content;
- (f) Falsify or misrepresent educational credentials or other information required for admission to the examination; or
- (g) Fail to follow written or announced examination administration procedures.

Section 7. Examination Misconduct Penalties. An examination candidate who violates any of the provisions of this administrative regulation may be prohibited from:

- (1) Further participation in that particular examination section;
- (2) Receiving grades after sitting for any examination; or
- (3) Sitting for subsequent examinations.

Section 8. An exam applicant shall immediately notify the board of a change in his or her mailing address.

Section 9. Reexam Applicants.

(1) Upon request, the board shall mail a Reexam Application for the Uniform CPA Exam to every candidate who fails to pass the Uniform CPA Examination.

(2) The reexam application shall be mailed to the most recent address provided by the candidate.

(3) The board shall not be responsible if the reexam application is not delivered by the United States Postal Service.

(4)(a) The applicant shall:

1. Indicate since the approval of the applicant's initial application if the applicant has been convicted, **pleaded/plead** guilty, entered an Alford plea, or a plea of no contest to a felony or misdemeanor, other than a minor traffic violation, and if so, submit with the reexam application:

- a. A copy of the judgment or sentence of conviction;
- b. A criminal record check report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System

that is within six (6) months of the date of the application, or a similar document from the out of state agency where the conviction was entered; and

c. A letter of explanation; and

2. If not previously submitted, and if the applicant is requesting reasonable accommodations in testing due to a disability, complete an Exam Applicant Special Accommodations Request Form supported by documentation no more than three (3) years old from a qualified examiner that shall include:

a. A diagnosis of the disability; and

b. Recommendation for the specific accommodations.

(b) The reexam application shall be received in the board's office prior to the reexam candidate being considered eligible to sit for any section of the exam.

(5)(a) The candidate shall return the completed reexam application with the reexam fee.

(b) The reexam fee shall be thirty (30) dollars per section. The reexam fee shall be nonrefundable and paid by check or money order made payable to the Kentucky State Board of Accountancy. If the institution the check or money order is drawn on does not honor the check or money order, the application shall be incomplete and returned.

(6) A reexam candidate who fails to comply with the requirements of this section shall not be allowed to sit for reexam.

(7) The procedures and policies in Section 5 of this administrative regulation shall be applicable to a reexam application.

(8) The reexam candidate shall comply with the requirements of Sections 6 through 8 of this administrative regulation.

Section 10. Examination Grades. Kentucky exam candidates shall/will receive their scores via the NASBA Web site: Nasba.org.

Section 11. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for the Uniform CPA Examination", 2023[October 2014];

(b) "Reexam Application for the Uniform CPA Examination", 2023[2014]; and

(c) "Exam Applicant Special Accommodations Request Form", October 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Monday through Friday, 8 a.m. to 4:30 p.m. or at <https://cpa.ky.gov/Pages/Forms.aspx>.

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BOARDS AND COMMISSIONS
Board of Optometric Examiners
(As Amended at ARRS, June 13, 2023)

201 KAR 5:055. Telehealth.

RELATES TO: KRS 211.332, 211.334, 211.335, 211.336, 320.210, 320.300, 320.390, 367.680-367.690, 42 U.S.C. secs. 1320d to 1320d-9, 12101 et. seq.

STATUTORY AUTHORITY: KRS 211.332, 211.336, 320.390(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 320.390(2) requires the Board of Optometric Examiners to promulgate administrative regulations to prevent abuse and fraud through the use of telehealth services, prevent fee-splitting through the use of telehealth services, and utilize telehealth in the provision of optometric services and in the provision of continuing education. KRS 211.336 establishes requirements for a state agency that promulgates administrative regulations relating to telehealth.

This administrative regulation establishes requirements for the use of telehealth services.

Section 1. Definitions.

(1) ~~["Contact lens prescription" is defined by KRS 367.680(3).]~~

~~[(2)] ["Eye examination" means an examination that meets the requirements for a complete eye examination established in 201 KAR 5:040, Section 7(1).]~~

~~[(3)] ["Face to face" means in person and not via telehealth.]~~

~~[(4)] ["Licensed health care professional" means an optometrist licensed pursuant to KRS Chapter 320, or a physician or osteopath licensed under KRS 311.550(12).]~~

~~[(5)] "Doctor of Optometry[Optometrist]" means an individual licensed by the Kentucky Board of Optometric Examiners to engage in the practice of optometry.~~

~~[(2)][(6)] "Patient" means the person receiving services or items from a doctor of optometry[an optometrist or a physician].~~

~~[(7)] ["Physician" is defined by KRS 311.550(12).]~~

~~[(3)][(8)] "Practice of optometry" is defined by KRS 320.210(2).~~

~~[(9)] ["Prescription" means an order for a pharmaceutical agent, or any other therapy within the scope of practice of an optometrist or a physician.]~~

~~[(10)] ["Prescription for eyewear" means a written prescription for visual aid glasses or a contact lens prescription after a complete eye examination is performed by an optometrist or physician.]~~

~~[(4)][(11)] "Telehealth" is defined by KRS 211.332(5) and 320.390(3)[and KRS 211.332].~~

~~[(12)] ["Telehealth provider" means an optometrist licensed pursuant to KRS Chapter 320 who performs a telehealth consultation.]~~

~~[(13)] ["Telepractice" means the practice of optometry that is provided by using communication technology that is two (2) way, interactive, simultaneous audio and video.]~~

~~[(14)] ["Visual aid glasses" is defined by KRS 320.210(4).]~~

Section 2. ~~[Patient Identity,]~~Communication and Informed Consent Requirements.

(1) All telehealth services by a doctor of optometry shall be conducted:

(a) By a doctor of optometry to a patient or to another health care provider at a different location; and,;

(b) Over secure telecommunication technologies, including technologies such as[but not limited to] synchronous and asynchronous technology, remote patient monitoring technology, and audio-only encounters.

(2) Prior to the delivery of telehealth services, a doctor of optometry shall[must] obtain the informed consent of the patient or obtain the consent by another appropriate person with authority to make the health care treatment decision for the patient such as the legal guardian or medical power of attorney.

(a) [For purposes of this section,] Informed consent by a patient may[can] be provided in writing, verbally acknowledged, or electronically submitted.

(b) The informed consent shall[must] include an acknowledgment of the risks and limitations of telehealth services.[An optometrist-patient relationship shall not commence via telehealth.]

~~[(2)] [An initial, in-person meeting for the optometrist and patient who will prospectively utilize telehealth shall occur in order to evaluate whether the potential or current patient is a candidate to receive services via telehealth.]~~

~~[(3)] [An optometrist who uses telehealth to deliver vision or eye care services shall at the initial, face-to-face meeting with the patient:]~~

~~[(a)] [Verify the identity of the patient;]~~

~~[(b)] [Establish a medical history and permanent record for the patient;]~~

~~[(c)] [Obtain alternative means of contacting the patient other than electronically such as by the use of a telephone number or mailing address;]~~

~~[(d)] [Provide to the patient alternative means of contacting the optometrist other than electronically such as by the use of a~~

telephone number or mailing address;]

~~[(e)] [Provide contact methods of alternative communication the optometrist shall use for emergency purposes such as an emergency on-call telephone number;]~~

~~[(f)] [Document if the patient has the necessary knowledge and skills to benefit from the type of telepractice provided by the optometrist; and]~~

~~[(g)] [Inform the patient in writing and document acknowledgement of the risk and limitations of:]~~

~~[1.] [The use of technology in the use of telepractice;]~~

~~[2.] [The potential breach of confidentiality of information or inadvertent access of protected health information due to technology in telepractice;]~~

~~[3.] [The potential disruption of technology in the use of telepractice;]~~

~~[4.] [When and how the optometrist will respond to routine electronic messages;]~~

~~[5.] [The circumstances in which the optometrist will use alternative communications for emergency purposes;]~~

~~[6.] [Others who may have access to patient communications with the optometrist;]~~

~~[7.] [How communications shall be directed to a specific optometrist;]~~

~~[8.] [How the optometrist stores electronic communications from the patient; and]~~

~~[9.] [Whether the optometrist may elect to discontinue the provision of services through telehealth.]]~~

Section 3. Jurisdictional Considerations.

(1) A doctor of optometry licensed by the Kentucky Board of Optometric Examiners may provide telehealth services in the practice of optometry;

(a) To a person who is a permanent resident of Kentucky ~~iff/while~~ the person is located in Kentucky;

(b) To a person who is a permanent resident of Kentucky ~~iff/while~~ the person is temporarily located outside of Kentucky; or

(c) To a person who is not a permanent resident of Kentucky ~~iff/while~~ the person is temporarily located in Kentucky.

(2) A doctor of optometry licensed by the Kentucky Board of Optometric Examiners may provide telehealth services ~~iff/when~~ the doctor of optometry is not physically located in Kentucky to a permanent resident of Kentucky.

(3) A doctor of optometry licensed by the Kentucky Board of Optometric Examiners may establish a doctor-patient relationship using telehealth and digital technologies. [A licensed health care professional providing eye and vision services via telehealth shall be licensed by the Kentucky Board of Optometric Examiners or the Kentucky Board of Medical Licensure if services are provided;]

[(1)] [To a person physically located in Kentucky; or]

[(2)] [By a person who is physically located in Kentucky.]

Section 4. Representation of Services and Code of Conduct.

(1) A doctor of optometry [A telehealth provider] shall not engage in false, misleading, or deceptive advertising.

(2) An advertisement for telehealth services ~~shall/must~~ comply with 201 KAR 5:002, Section 2. [A person shall not advertise an eye examination unless the requirements of 201 KAR 5:040, Section 7(1) are met. A person shall not purport to write a prescription for eyewear solely by using an autorefractor or other automated testing device.]

(3) [(2)] Evaluation, treatment, and consultation recommendations by a doctor of optometry via telehealth shall be held to the same standards of appropriate practice as those in traditional in-person clinical settings and established in 201 KAR 5:002, Section 3. [Treatment and consultation recommendations made in an online setting, including a prescription or a prescription for eyewear via electronic means, shall be held to the same standards of appropriate practice as those in traditional practice, face-to-face settings. Treatment, including issuing a prescription for eyewear based solely on an online autorefraction, shall not constitute an acceptable practice or standard of care.]

(4) A doctor of optometry providing optometry services via telehealth shall: [A telehealth provider shall:]

(a) Verify the identity of the patient before telehealth services are performed [Not split fees in accordance with KRS 320.300(3)];

(b) Collect and review a patient's medical history [Shall maintain a medical record of a service or item provided to a patient via telepractice];

(c) Provide any applicable accommodations required by the Federal Americans with Disabilities Act, 42 U.S.C. secs. 12101 et seq., as amended;

(d) Maintain patient privacy and security in accordance with applicable state and federal law;

(e) Gather and transmit protected health information in compliance with the federal Health Insurance Portability and Accountability Act of 1996, as amended, **42 U.S.C. secs. 1320d to 1320d-9**;

(f) [(e)] Document and maintain a record of the patient's presenting problem ~~or~~ purpose for the telehealth service, including the ~~or~~ diagnosis or treatment and include which services were provided by telehealth [telepractice];

(g) Perform telehealth services with a recognized Current Procedural Terminology Code maintained by the American Medical Association, if applicable;

(h) Secure all required credentialing for reimbursement of telehealth services; and

(i) Obtain privileges if required by hospitals or facilities to admit and treat patients.

(5) An optometrist providing telehealth services shall not split fees in accordance with KRS 320.300(3);

(6) Prescriptions for controlled substances shall not be made via telehealth by a doctor of optometry.

(7) A contact lens or visual aid glasses prescription issued through telehealth ~~shall/must~~ include the requirements established in the Kentucky Consumer Protection in Eye Care Act, **KRS 367.680 to 367.690/-690-et seq.**

[(d)] [Use secure communications with each patient including encrypted text messages, via email or secure Web site and not use personal identifying information in non-secure communications; and]

[(e)] [Dispense visual aids only in accordance with KRS 320.300(4).]

Section 5. Utilization of Telehealth in Provision of Continuing Education. Credit for telehealth educational presentations shall be granted in accordance with 201 KAR 5:030. ~~Section 2. Educational hours obtained through telehealth shall be considered as part of the credit hours granted in accordance with 201 KAR 5:030, Section 6(1).]~~

~~[Section 6.] [This administrative regulation shall not be construed as giving jurisdiction over physicians licensed under KRS Chapter 311 to the Kentucky Board of Optometric Examiners.]~~

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BOARDS AND COMMISSIONS

Board of Nursing

(As Amended at ARRS, June 13, 2023)

201 KAR 20:478. Dialysis technician scope of practice, discipline, and miscellaneous requirements.

RELATES TO: KRS 314.021, 314.035, 314.089, 314.091, 314.103, 314.137, 314.991

STATUTORY AUTHORITY: KRS 314.131(1), 314.137

NECESSITY, FUNCTION AND CONFORMITY: KRS 314.137 requires the board to promulgate administrative regulations to regulate dialysis technicians and includes establishing provisions for discipline and further regulating as necessary and includes establishing provisions for discipline and further

~~regulating as necessary~~. This administrative regulation establishes the scope of practice and disciplinary procedures for dialysis technicians.

Section 1. Scope of Practice. (1) The scope of practice of a dialysis technician shall include the following and shall be performed under the direct, on-site supervision of a registered nurse, an advanced practice registered nurse, a physician, or a physician's assistant:

(a) Preparation and cannulation of peripheral access sites (arterial-venous fistulas and arterial-venous grafts);

~~(b) Preparation of catheter ports, [and] access, including connection and disconnection, and site care of percutaneously or surgically inserted central venous catheters, if the dialysis technician has six (6) months experience that includes training and skills validation regarding central venous catheters;~~

~~(c)[(b)]~~ Initiating, delivering, or discontinuing dialysis care;

~~(d)[(e)]~~ Administration of the following medications only:

1. Heparin 1:1000 units or less concentration either to prime the pump, initiate treatment, or for administration throughout the treatment, in an amount prescribed by a physician, physician's assistant, or advanced practice registered nurse. The dialysis technician shall not administer heparin in concentrations greater than 1:1000 units;

2. Normal saline via the dialysis machine to correct dialysis-induced hypotension based on the facility's medical protocol. Amounts beyond that established in the facility's medical protocol shall not be administered without direction from a registered nurse or a physician; and

3. Intradermal lidocaine, in an amount prescribed by a physician, physician's assistant, or advanced practice registered nurse;

~~(e)[(d)]~~ Assistance to the registered nurse in data collection;

~~(f)[(e)]~~ Obtaining a blood specimen via a dialysis line or a peripheral access site;

~~(g)[(f)]~~ Responding to complications that arise in conjunction with dialysis care; and

~~(h)[(g)]~~ Performance of other acts as delegated by the registered nurse pursuant to 201 KAR 20:400.

(2) The scope of practice of a dialysis technician shall not include:

(a) Dialysis care for a patient whose condition is ~~found[determined][found]~~ by the registered nurse to be critical, fluctuating, unstable, or unpredictable;

~~(b) The preparation of catheter ports, access, including connection and disconnection, and site care of [connection and disconnection of patients from, and the site care and catheter port preparation of,] percutaneously or surgically inserted central venous catheters, except as authorized[provided] in Section 1(1)(b) of this administrative regulation; and~~

(c) The administration of blood and blood products.

Section 2. Discipline of a Dialysis Technician. (1) The board ~~may[shall have the authority to]~~ discipline a dialysis technician (DT) or a dialysis technician applicant (DTA) for:

(a) Failure to safely and competently perform the duties of a DT or DTA as established in this administrative regulation;

(b) Practicing beyond the scope of practice as established in this administrative regulation;

(c) Conviction of any felony, or a misdemeanor involving drugs, alcohol, fraud, deceit, falsification of records, a breach of trust, physical harm or endangerment to others, or dishonesty under the laws of any state or of the United States. The record of conviction or a copy thereof, certified by the clerk of the court or by the judge who presided over the conviction, shall be conclusive evidence;

(d) Obtaining or attempting to obtain a credential by fraud or deceit;

(e) Abusing controlled substances, prescription medications, or alcohol;

(f) Use, or impairment as a consequence of use, of alcohol or drugs while on duty as a dialysis technician, dialysis technician

trainee, or dialysis technician applicant;

(g) Possession or use of a Schedule I controlled substance;

(h) Personal misuse or misappropriation for use of others of any drug placed in the custody of the DT or DTA for administration;

(i) Falsifying or in a negligent manner making incorrect entries or failing to make essential entries on essential records;

(j) Having a dialysis technician credential disciplined by another jurisdiction on grounds sufficient to cause a credential to be disciplined in this Commonwealth;

(k) Practicing without filing an Application for Dialysis Technician Credential, ~~as incorporated by reference in 201 KAR 20:476,~~ as incorporated by reference in 201 KAR 20:476, or without holding a dialysis technician credential;

(l) Abuse of a patient;

(m) Theft of facility or patient property;

(n) Having disciplinary action on a professional or business license;

(o) Violating any lawful order or directive previously entered by the board;

(p) Violating any applicable requirement of KRS Chapter 314 or 201 KAR Chapter 20;

(q) Having been listed on the nurse aide abuse registry with a substantiated finding of abuse, neglect, or misappropriation of property; or

(r) Having violated the confidentiality of information or knowledge concerning any patient, except as authorized or required by law.

(2) The discipline may include the following:

(a) Immediate temporary suspension of the credential, following the procedure established in KRS 314.089;

(b) Reprimand of the credential;

(c) Probation of the credential for a specified period of time, with or without limitations and conditions;

(d) Suspension of the credential for a specified period of time;

(e) Permanent revocation of the credential; or

(f) Denying the Application for Dialysis Technician Credential, ~~as incorporated by reference in 201 KAR 20:476,~~ as incorporated by reference in 201 KAR 20:476, or ~~as incorporated by reference in 201 KAR 20:476.~~

(3) The board shall follow the procedures established in and have the authority established in KRS 314.091, 201 KAR 20:161, and 201 KAR 20:162 for management and resolution of complaints filed against a dialysis technician.

(4) In addition to the provisions of subsection (3) of this section, the board may impose a civil penalty of up to \$10,000.

Section 3. Miscellaneous Requirements. (1) ~~A[An]~~ Any person credentialed by the board as a dialysis technician shall maintain a current mailing address and email address with the board and immediately notify the board in writing of a change of mailing address or email address.

(2)(a) Holding a credential shall constitute consent by the dialysis technician to service of notices or orders of the board. Notices and orders shall be sent to the mailing address on file with the board.

(b) Any notice or order of the board mailed or delivered to the mailing address on file with the board shall constitute valid service of the notice or order.

(3) ~~A[Any]~~ Any dialysis technician credentialed by the board shall, within ninety (90) days of entry of the final judgment, notify the board in writing of any misdemeanor or felony conviction in this or any other jurisdiction.

(4) ~~A[Any]~~ Any dialysis technician credentialed by the board shall, within ninety (90) days of entry of a sanction specified in this subsection, notify the board in writing if any professional or business license that is issued to the person by any agency of the commonwealth or any other jurisdiction:

(a) Is surrendered or terminated under threat of disciplinary action;

(b) Is refused, limited, suspended, or revoked; or

(c) If renewal is denied.

(5) If the board has reasonable cause to believe that any DT or DTA is unable to practice with reasonable skill and safety or has abused alcohol or drugs, it shall require the person to submit to a

substance use disorder evaluation or a mental or physical examination by a board approved practitioner.

(a) Holding a credential shall constitute:

1. Consent by the dialysis technician to a substance use disorder evaluation, mental examination, or physical examination if directed in writing by the board. The direction to submit to an evaluation or examination shall contain the basis for the board's concern that the technician is unable to practice safely and effectively; and

2. Waiver of objections to the admissibility of the examining practitioner's testimony or examination reports on the grounds of privileged communication.

(b) The dialysis technician shall bear the cost of substance use disorder evaluation, mental examination, or physical examination ordered by the board.

(c) Upon failure of the dialysis technician to submit to a substance use disorder evaluation, mental examination, or physical examination ordered by the board ~~[, unless due to circumstances beyond the person's control,]~~ the board ~~may/shall~~ may initiate an action for immediate temporary suspension pursuant to KRS 314.089 or deny an application until the person submits to the required examination.

(d) If a substance use disorder evaluation, mental examination, or physical examination pursuant to this subsection results in a finding that indicates that the dialysis technician is unable to practice with reasonable skill and safety or has abused alcohol or drugs, the dialysis technician shall be subject to disciplinary procedures as established in this administrative regulation.

(6) Due process procedures, including appeal, pertaining to this administrative regulation shall be conducted in accordance with KRS Chapter 13B.

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**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, June 13, 2023)**

301 KAR 1:001. Definitions for 301 KAR Chapter 1.

RELATES TO: KRS 150.010, 150.025, 150.170, 50 C.F.R. 17.11

STATUTORY AUTHORITY: 150.025(1)(h)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)(h) authorizes[requires] the department to promulgate administrative regulations to carry out the purposes of KRS Chapter 150 ~~purpose of the chapter~~. This administrative regulation establishes definitions for terms used in 301 KAR Chapter 1.

Section 1. Definitions.

(1) "Adjacent landowner" means the owner of real property that shares a common boundary with department property.

(2) "Angler" means a person holding a valid resident or nonresident fishing license and includes those persons who are fishing license exempt as established in KRS 150.170.

(3) "APHIS" means U.S. Department of Agriculture Animal and Plant Health Inspection Service.

(4) "APHIS-approved laboratory" means a laboratory authorized by a state, tribal, or federal primacy authority to analyze aquatic animal health and perform assays for the detection of the VHS virus.

(5) "Aquarium species" means the species of fish that are legally sold in the pet and ornamental trade business and not stocked into waters of the Commonwealth.

(6) "Aquatic organisms" means fish, frog, crayfish, and other aquatic vertebrate and invertebrate.

(7) "Archery equipment" means a long bow, recurve bow, or

compound bow incapable of holding an arrow at full or partial draw without aid from the archer.

(8) "Artificial bait" means a lure, bare hook, or fly made of wood, metal, plastic, feathers, preserved pork rind, or a similar inert material.

(9) "Bar mesh size" means the distance between two (2) knots on a line of a net.

(10) "Boat dock" means a privately owned floating or fixed structure that is used by an adjacent landowner to moor a boat on department property.

(11) "Boat dock tag" means a metal tag provided by the department that has a unique combination of letters and numbers and is permanently affixed to an approved boat dock so that it is visible from the lake.

(12) "Boating access area" means property owned or managed by the department and identified by signs as a public facility for launching and retrieving boats, including:

(a) Ramps, parking lots, courtesy docks, and access roads; and

(b) A zone extending fifty (50) feet into the water adjacent to the department property established ~~described~~ in paragraph (a) of this subsection.

(13) "Bow fishing" means shooting rough fish with an arrow with a barbed or retractable style point that has a line attached to it for retrieval with archery equipment, a crossbow, or a pneumatic arrow launching device.

(14) "Buffer zone" means the area from the lake pool level of Cedar Creek Lake to the marked boundary.

(15) "Buyer's permit" means a Commercial Roe-bearing Fish Buyer's Permit.

(16) "By-catch" means any fish that is not an invasive carp or scaled rough fish.

(17) "Camp" means the erecting of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, or parking of a motor vehicle, motor home, or trailer for the apparent purpose of overnight occupancy.

(18) "Catfish" means a blue catfish, channel catfish, or flathead catfish.

(19) "Certified VHS free facility" means a fish-rearing facility that has been certified VHS free by an APHIS approved laboratory.

(20) "Chumming" means placing substances in the water for the purpose of attracting fish to a particular area.

(21) "Commercial fisherman" means a person holding a valid resident or nonresident commercial fishing license.

(22) "Commercial gear tag" means a metal tag provided by the department and that is attached to legal commercial fishing gear as established in 301 KAR 1:146.

(23) "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without the aid from an archer.

(24) "Cull" or "culling" means to release a previously caught fish that an angler has kept as a part of a daily limit and replace it with another fish of the same species.

(25) ~~["Culling" means releasing a previously caught fish that an angler has kept as a part of a daily limit and replacing it with another fish of the same species.~~

~~(26)]~~ "Daily limit" means the maximum number of a particular species or group of species a person may legally take in one (1) calendar day while fishing.

~~(26)]~~ ~~(27)]~~ "Department property" means lands or waters controlled by the department through ownership, lease, license, easement, or cooperative agreement at department-owned lakes.

~~(27)]~~ ~~(28)]~~ "Different body of water";

~~(a)~~ Means a body of water that is separate and not contiguous to another body of water, including a man-made reservoir that is separated from a downstream river by a dam; and

~~(b) Does not mean; but does not include~~ a river, stream, or creek that is separated by a low-level dam.

~~(28)]~~ ~~(29)]~~ "Diploid grass carp" means a fish of the genus and species *Ctenopharyngodon idella* that is reproductively fertile and has not been genetically altered and therefore has the normal set of somatic chromosomes as determined by blood sample.

~~(29)]~~ ~~(30)]~~ "Existing structure" means an exempted access or

nonaccess structure built on department property prior to April 2, 2010.

(30) [(31)] "Flag net" means a gill or trammel net that is anchored on one (1) end, with the other end of the net unanchored, allowing this end of the gill or trammel net to float freely.

(31) [(32)] "Harvester permit" means a Commercial Roe-bearing Fish Harvester's Permit.

(32) [(33)] "Idle speed" means the slowest possible speed at which maneuverability can be maintained.

(33) [(34)] "Immediate family" means a person's spouse, mother, father, daughter, brother, sister, grandparent, or son.

(34) [(35)] "Invasive carp" means:

- (a) Bighead carp *Hypophthalmichthys nobilis*;
- (b) Black carp *Mylopharyngodon piceus*;
- (c) Grass carp *Ctenopharyngodon idella*; or
- (d) Silver carp *Hypophthalmichthys molitrix*.

(35) [(36)] "Lake" means impounded waters from the dam upstream to the first riffle on the main stem river and tributary streams.

(36) [(37)] "Live bait" means the organisms established in paragraphs (a) through (h) of this subsection if they are alive:

- (a) Live bait fish;
- (b) Crayfish;
- (c) Salamander;
- (d) Frog, except bullfrog;
- (e) Tadpole;
- (f) Native lamprey;
- (g) Asiatic clam (*Genus Corbicula*); or
- (h) Other aquatic invertebrate organisms, except for mussel.

(37) [(38)] "Live bait fishes" means:

- (a) Rough fish, except invasive carp and federally threatened or endangered species, as established in 50 C.F.R. 17.11; or
- (b) Redear sunfish less than six (6) inches in length.

(38) [(39)] "Lower Ohio River Trophy Catfish" means, for the area downstream of Cannelton Lock and Dam in the Ohio River and its tributaries open to commercial fishing:

- (a) Blue or flathead catfish that is a minimum of forty (40) inches in length; or
- (b) Channel catfish that is a minimum of thirty (30) inches in length.

(39) [(40)] "Lower Ohio River Trophy Catfish Harvest Permit" means a permit that allows a commercial fisherman to harvest Lower Ohio River Trophy Catfish.

(40) [(41)] "Normal pool" means a water level equal to the elevation of the lake's principal spillway.

(41) [(42)] "Overflow lake" means a permanent or temporary body of water that receives overflow flood waters from an adjacent stream.

(42) [(43)] "Pay lake" means a privately owned~~privately-owned~~, impounded body of water where a daily fee is charged to fish and is open to the public.

(43) [(44)] "Pay lake operator" means a person who holds a valid pay lake license, as established in 301 KAR 3:022.

(44) [(45)] "Permanent dwelling":

(a) Means a private residence on an adjacent landowner's property that is both fixed in location and of durable permanent construction; and

(b) Does not mean, but does not include tents, motorized vehicles, trailers, camp trailers, or any type of interim construction or residence.

(45) [(46)] "Pneumatic arrow launching device" means a device designed to fire an arrow using a compressed air cartridge.

(46) [(47)] "Possession limit" means the maximum number of unprocessed fish a person holds~~may hold~~ after two (2) or more days of fishing.

(47) [(48)] "Processed fish" means a fish that has been gutted, with the head removed.

(48) [(49)] "Rebuild" means to totally reconstruct.

(49) [(50)] "Release" means to return a fish to the water from which it was taken immediately after removing the hook.

(50) [(51)] "Restricted water" means those areas, as established in 301 KAR 1:140, 1:146, 1:150, and 1:155, where:

- (a) Commercial fishing is prohibited;

- (b) Commercial fishing with gill or trammel nets is prohibited; or
- (c) Commercial fishing with gill or trammel nets of restricted net mesh size is prohibited.

(51) [(52)] "Roe-bearing fish" means paddlefish, shovelnose sturgeon, and bowfin, regardless of the sex of the fish or the presence or absence of roe.

(52) [(53)] "Roe-bearing Fish Buyer's Permit" means a permit issued by the department that entitles the permit holder to buy roe-bearing species or roe ~~in accordance with this administrative regulation~~.

(53) [(54)] "Roe-bearing Fish Harvester's Permit" means a permit issued by the department to a licensed commercial fisherman that entitles the permit holder to harvest and sell roe-bearing species ~~in accordance with this administrative regulation~~.

(54) [(55)] "Rough fish" is defined by KRS 150.010(37).

(55) [(56)] "Scaled rough fish" means any scaled fish that is not an invasive carp, sport fish as established in 301 KAR 1:060, roe bearing fish, or a species ineligible for commercial harvest as established in 301 KAR 1:155.

(56) [(57)] "Shad" means a live gizzard shad or threadfin shad.

(57) [(58)] "Shoreline use permit" means a permit issued by the department that allows an adjacent landowner to construct a new access structure or to keep or rebuild an existing structure on department land.

(58) [(59)] "Single hook" means a hook with no more than one (1) point.

(59) [(60)] "Size limit" means the minimum legal length of a fish that is measured by laying the fish flat on a ruler with the mouth closed and tail lobes squeezed together.

(60) [(61)] "Slot limit" means a size range of a fish species that shall be released by an angler.

(61) [(62)] "Slow speed" means speed attained with the throttle of the motor set at its slowest forward position.

(62) [(63)] "Speeding and reckless operation" means any operation of a boat in any area of a lake that could~~may~~ endanger other persons or craft using the lake by intimidation, direct contact or by waves created by the speed or reckless operation of a boat.

(63) [(64)] "Sport fish" means those species established in 301 KAR 1:060.

(64) [(65)] "Sport fisherman" means a person holding a valid resident or nonresident fishing license and includes a person who is license exempt pursuant to KRS 150.170.

(65) [(66)] "Temporary aquatic area" means an area:

- (a)** Temporarily inundated from, but still connected to, a stream, river, or reservoir; and
- (b)** That persists only for the duration of the elevated water levels.

(66) [(67)] "Temporary pool" means an area temporarily inundated from, but not connected to, a stream, river, or reservoir.

(67) [(68)] "Traditional fishing methods" means the act of taking or attempting to take for non-commercial purposes any freshwater fish species using:

- (a) Hook and line in hand; or
- (b) Rod in hand.

(68) [(69)] "Triploid grass carp" means a fish of the genus and species *Ctenopharyngodon idella* that is reproductively sterile because it has been genetically altered to have an additional or extra set of somatic chromosomes as determined by blood sample.

(69) [(70)] "Trophy catfish" means a:

- (a) Blue or flathead catfish that is a minimum of thirty-five (35) inches in length; or
- (b) Channel catfish that is a minimum of twenty-eight (28) inches in length.

(70) [(71)] "Turtle" means a:

- (a) Common snapping turtle (*Chelydra serpentina*);
- (b) Smooth softshell turtle (*Apalone mutica*); or
- (c) Spiny softshell turtle (*Apalone spinifer*).

(71) [(72)] "Unlicensed helper" means a person without a commercial fishing license who is assisting a commercial fisherman.

(72) [(73)] "Unprocessed fish" means the whole fish prior to being processed.

~~(73)~~~~(74)~~ "Unprocessed roe" means roe that has been removed from a roe-bearing fish by a food processing plant prior to its sale at a roe-bearing fish buyer's facility.

~~(74)~~~~(75)~~ "VHS" means Viral Hemorrhagic Septicemia, a disease of fish.

~~(75)~~~~(76)~~ "VHS positive state" means any state in the United States, or any Canadian province, listed on the APHIS Web site www.aphis.usda.gov as being positive for Viral Hemorrhagic Septicemia (VHS).

~~(76)~~~~(77)~~ "VHS-regulated fish species" means any species of fish deemed susceptible to VHS and listed on the APHIS Web site at www.aphis.usda.gov.

~~(77)~~~~(78)~~ "Water supply lake" means a lake that:

(a) Is owned by a municipality or other public water supply entity;

(b) Provides potable water supply for the public;

(c) Is not owned by the state; and

(d) Is not managed by the department.

~~(78)~~~~(79)~~ "Whip set" means a gill net or a trammel net rigged so it is free-floating.

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**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, June 13, 2023)**

301 KAR 2:222. Waterfowl hunting requirements on public lands.

RELATES TO: KRS 150.010~~(42)~~~~(44)~~, 150.305(1), 150.330, 150.340(1), (3), 150.990

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 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 of taking wildlife. KRS 150.600(1) 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 reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions.

(1) "Blind" means a:

(a) Concealing enclosure;

(b) Pit; or

(c) Boat.

(2) "Department blind" means a permanently fixed blind structure built by the department.

(3) "Drawn hunter" means a hunter who applied for a limited-access hunt and was selected by the department to participate in the hunt.

(4) "Guest hunter" means a hunter invited by a waterfowl permit holder to participate in a limited-access hunt.

(5) "Hunt site" means a specific location where waterfowl hunting is allowed, as assigned by the department or the U.S. Army Corps of Engineers and marked with a sign.

(6) "Hunt unit" means a tract of land with defined boundaries where a party may hunt waterfowl as approved by the department.

(7) "Limited-access hunt" means a hunting opportunity where public access is limited by the department to those who are selected in a random drawing.

(8) "Party" means:

(a) A person hunting alone; or

(b) Two (2) to four (4) people who share a department blind, hunt unit, or hunt site.

(9) "Permanent blind" means a blind left in place by a waterfowl hunter longer than twenty-four (24) hours.

(10) "Quota hunt" means a class of limited-access hunt that includes the word quota in the name of the hunt as established in administrative regulation.

(11) "Regular waterfowl season" means the open waterfowl season that does not include the Light Geese Conservation Order season, special youth waterfowl season, special veterans and active military personnel waterfowl season, or the September wood duck, teal, and Canada goose seasons as established in 301 KAR 2:221 and 2:225.

(12) "Special commission waterfowl permit holder" means a person who has been assigned a special commission permit for waterfowl, issued pursuant to 301 KAR 3:100, which allows the permit recipient to participate in the waterfowl quota hunt and receive priority selection for hunting dates during hunts at Ballard and Sloughs WMAs.

(13) "Waterfowl permit holder" means a special commission waterfowl permit holder or drawn hunter who has been assigned to a limited-access department blind, hunt unit, or hunt site by the department or the U.S. Army Corps of Engineers.

(14) "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.

Section 2. Waterfowl Seasons on Wildlife Management Areas.

(1) Waterfowl season provisions shall apply, as established in 301 KAR 2:221 and 301 KAR 2:225, except as established in this section or in Section 3 of this administrative regulation.

(2) On a wildlife management area, a person hunting waterfowl shall not:

(a) Establish or hunt from a permanent waterfowl blind;

(b) Hunt within 200 yards of another legal waterfowl hunting party;

(c) Hunt in a designated recreation area or access point;

(d) Hunt on an area marked by sign as closed to hunting;

(e) Enter an area marked by signs as closed to public access;

or

(f) Hunt a species on an area marked by signs as closed to hunting for that species.

(3) More than one (1) party shall not occupy a waterfowl blind or hunt site.

(4) A party shall remove decoys and personal items daily, except that a party assigned a multi-day hunt may choose to leave decoys in place for the duration of the hunt.

(5) A permanent blind, department blind, or blind site not occupied by the waterfowl permit holder one (1) hour before sunrise shall be available to another hunter on a first-come, first-served basis.

(6) Restrictions established in this section shall not apply to a falconer if regular waterfowl season, special youth waterfowl season, or special veteran's active military personnel season, as established in 301 KAR 2:221, are not open.

Section 3. Wildlife Management Area Requirements.

(1) The provisions of this section shall not apply to a waterfowl hunting season that opens prior to October 15, as established in 301 KAR 2:225.

(2) On wildlife management areas in Ballard County:

(a) The shotgun shell possession limit shall be twenty-five (25);

(b) At least one (1) person in each party shall be eighteen (18) years of age or older; and

(c) A person hunting waterfowl shall:

1. Not hunt on Monday, Tuesday, Christmas Eve, Christmas Day, or New Year's Day;

2. Hunt in a party that includes a waterfowl permit holder;

3. Hunt in the department blind, hunt unit, or hunt site assigned to that waterfowl permit holder through a drawing as established in Section 4 of this administrative regulation;

4. Hunt in close proximity to other party members so that each

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member of the party is within twenty-five (25) feet of another party member and no two (2) party members are more than seventy-five (75) feet apart;

5. Stop hunting and exit the hunting area by 2 p.m. during the regular waterfowl season, except as authorized by the department as necessary due to flooding, weather, or other safety concerns; and

6. Check out of the area by accurately completing the Daily Post-hunt Survey provided by the department and submitting the survey at the department-designated drop point by 3 p.m. the day of the hunt or be declared ineligible to hunt in a department limited-access waterfowl hunt for the remainder of the current and following waterfowl season.

(3) Ballard WMA.

(a) Ballard WMA shall be closed to the public from October 15 through March 15, except for persons participating in department-managed activities.

(b) During periods of high water or flood, the public shall not enter upon the premises of the Ballard WMA by boat for any purpose. High water or flood conditions ***shall[do]*** not affect or change the management area boundary.

(c) A person hunting waterfowl shall not hunt waterfowl on the Ohio River from fifty (50) yards upstream of the northern border of Ballard WMA to fifty (50) yards downstream from the southern border of Ballard WMA from October 15 through March 15.

(4) Boatwright WMA.

(a) The Swan Lake Unit shall be closed to the public from October 15 through March 15, except for persons participating in department-managed activities.

(b) The area open to hunting during the regular waterfowl season shall be open for the Light Geese Conservation Order season as established in 301 KAR 2:221.

(c) Blind, hunt unit, or hunt site restrictions shall not apply to the Light Geese Conservation Order season.

(d) Boatwright WMA shall be closed to boats from December 1 through January 31, except for persons participating in department-managed activities.

(5) Lake Barkley WMA.

(a) A permanent blind shall only be established within ten (10) yards of a hunt site.

(b) Waterfowl refuge areas:

1. The area west of the Cumberland River channel, as marked by buoys, between river mile 51, at Hayes Landing Light, south to the Tennessee Valley Authority's power transmission lines at river mile 55.5, shall be closed from November 1 through February 15; and

2. The area within Honker Bay and Fulton Bay, as marked by buoys and signs, shall be closed from November 1 through March 15.

(c) A person shall not hunt from October 15 through March 15:

1. On Duck Island; or

2. Within 200 yards of Duck Island.

(6) Barren River Lake WMA. A person hunting waterfowl:

(a) May use a breech-loading shotgun along the shoreline of the Peninsula Unit; and

(b) Shall not use a breech-loading firearm elsewhere on the area.

(7) Big Rivers WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(8) Cedar Creek WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(9) Miller Welch-Central Kentucky WMA. A person shall not hunt waterfowl from October 15 through January 14.

(10) Lake Cumberland WMA. The following sections shall be closed to the public from October 15 through March 15:

(a) The Wesley Bend area, bounded by Fishing Creek, Beech Grove Road, and Fishing Creek Road; and

(b) The Yellowhole area, bounded by Fishing Creek Road and Hickory Nut Road.

(11) Dix River WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(12) Doug Travis WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(c) A person hunting waterfowl shall stop hunting and exit the hunting area by 2 p.m. during the regular waterfowl season, except as authorized by the department as necessary due to flooding, weather, or other safety concerns.

(d) On Black Lake, Fish Lake, Forked Lake, Indian Camp Lake, Number Four Lake, Town Creek Moist Soil Unit, Twin Ponds Moist Soil Unit, and Upper Goose Pond Field, all waterfowl hunting shall be from a permanent blind or within ten (10) yards of a hunt site assigned by the department through a drawing as established in Section 4 of this administrative regulation.

(13) Grayson Lake WMA. A person shall not hunt waterfowl:

(a) Within the no-wake zone at the dam site marina;

(b) From the shore of Camp Webb;

(c) On Deer Creek Fork; or

(d) Within three-quarters (3/4) of a mile from the dam.

(14) Green River Lake WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(15) Kaler Bottoms WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(16) Kentucky River WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(17) Land Between the Lakes National Recreation Area.

(a) The following portions shall be closed to the public from November 1 through March 15:

1. Long Creek Pond;

2. The eastern one-third (1/3) of Smith Bay, as marked by buoys; and

3. The eastern two-thirds (2/3) of Duncan Bay, as marked by buoys.

(b) The following portions shall be closed to waterfowl hunting:

1. The Environmental Education Center; and

2. Energy Lake.

(c) A person shall possess an annual Land Between the Lakes Hunting Permit if hunting waterfowl:

1. Inland from the water's edge of Kentucky Lake or Barkley Lake; or

2. From a boat on a flooded portion of Land Between the Lakes when the lake level is above ***an*** elevation of 359 ***feet***.

(d) A person shall not hunt waterfowl on inland areas during a quota deer hunt.

(e) A person shall not establish or use a permanent blind:

1. On an inland area; or

2. Along the Kentucky Lake shoreline of Land Between the Lakes.

(18) Obion Creek WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(19) Ohio River Islands WMA.

(a) A person shall not hunt from October 15 through March 15 on the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to the power line crossing at approximately river mile 911.5.

(b) Stewart Island shall be closed to public access from October 15 through March 15.

(c) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(d) A person shall not enter a hunting area prior to 4 a.m. daily.

(20) Peabody WMA.

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(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(c) The following areas, as posted by signs, shall be closed to the public from October 15 through March 15:

1. The Sinclair Mine area, bounded by Hwy 176, the haul road, and Goose Lake Road; and

2. The Ken area, bounded by Wysox Road, H2 Road, H1 Road, and H6 Road.

(21) Pioneer Weapons WMA. A person hunting waterfowl:

(a) May use a breech-loading shotgun along the shoreline of Cave Run Lake; and

(b) Shall not use a breech-loading firearm elsewhere on the area.

(22) Robinson Forest WMA. The main block of the WMA shall be closed to waterfowl hunting.

(23) Sloughs WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(c) A person hunting waterfowl shall stop hunting and exit the hunting area by 2 p.m. during the regular waterfowl season, except as authorized by the department as necessary due to flooding, weather, or other safety concerns.

(d) If hunting waterfowl on the Crenshaw and Duncan Tracts of the Sauerheber Unit or the Jenny Hole Unit:

1. A person shall not hunt on a Tuesday or Wednesday;

2. A person shall not possess more than twenty-five (25) shotgun shells;

3. At least one (1) person in each party shall be eighteen (18) years of age or older; and

4. Hunt in a party that includes a waterfowl permit holder;

5. Hunt in the department blind, hunt unit, or hunt site assigned to that waterfowl permit holder through a drawing as established in Section 4 of this administrative regulation;

6. Hunt in close proximity to other hunt party members so that each member of the party is within twenty-five (25) feet of another party member and no two (2) party members are more than seventy-five (75) feet apart; and

7. Check out of the area by accurately completing the Daily Post-Hunt Survey provided by the department and submitting the survey at the designated drop point by 3 p.m. the day of the hunt or be ineligible to hunt in department limited-access waterfowl hunts for the remainder of the current and following waterfowl season.

(e) The Sauerheber Unit shall be closed to the public from November 1 through March 15, except for persons participating in department-managed activities.

(f) The Jenny Hole Unit shall be closed to boats from Thanksgiving Day through January 31, except for persons participating in department-managed activities.

(g) The area open to hunting during the regular waterfowl season shall be open for the Light Geese Conservation Order season as established in 301 KAR 2:221.

(h) Blind, hunt unit, or hunt site restrictions shall not apply to the Light Geese Conservation Order season.

(24) South Shore WMA. The WMA shall be closed to hunting from November 15 through January 15, except for waterfowl and dove hunting.

(25) Taylorsville Lake WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(26) Yatesville Lake WMA. 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 from the mouth of the Greenbrier Creek embayment to the dam, including the island.

(27) Yellowbank WMA. The area designated by a sign and painted boundary marker shall be closed to the public from October 15 through March 15.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(28) J.C. Williams WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

Section 4. Limited-Access Waterfowl Hunts.

(1) Permanent waterfowl blinds or hunt sites on Lake Barkley, Barren River Lake, Green River Lake, or Doug Travis Wildlife Management Area.

(a) The department shall announce the time and location of drawings on the department's Web site at fw.ky.gov at least two (2) weeks prior to the drawing.

(b) Applicants:

1. Shall apply in person;

2. Shall fill out the provided index card with the requested information completely and accurately;

3. Shall not mark or mutilate the index card in an attempt to increase the probability of being selected;

4. Shall not apply more than once per drawing;

5. Be at least eighteen (18) years of age; and

6. Possess:

a. A valid Kentucky hunting license;

b. A valid Kentucky migratory game bird and waterfowl permit; and

c. A valid federal duck stamp.

(c) Drawing.

1. The department or U.S. Army Corps of Engineers shall conduct a random drawing of applicants.

2. A drawn hunter shall choose from available hunt sites before the next drawn hunter may select a hunt site.

3. Selected hunt sites **shall/will** not be available for the next drawn hunter.

4. If a drawn hunter is not present, or does not select a hunt site, then the next drawn hunter may select a hunt site.

5. The drawing shall continue until all available hunt sites are selected or all applicants have been drawn.

(d) The department or U.S. Army Corps of Engineers shall designate the drawn hunter as the waterfowl permit holder for the selected hunt site.

(e) The drawn hunter may designate one (1) additional applicant to be a waterfowl permit holder for the selected hunt site.

(f) An applicant **shall/may** not be a waterfowl permit holder for more than one (1) permanent blind or hunt site at Doug Travis WMA.

(g) Waterfowl permit holders for hunt sites shall:

1. Construct permanent blinds, if desired, before the start of any special or regular waterfowl season as established in 301 KAR 2:221;

2. Not lock a waterfowl blind; and

3. Remove the blind and blind materials within thirty (30) days after the close of the regular waterfowl season or be ineligible for a permit the following year unless an extension of time is granted by the department due to weather or water level conflicts.

(h) Waterfowl permit holders may take guest hunters to their assigned permanent blind or hunt site, but the total number of people in the party **shall/may** not exceed four (4).

(i) A permanent blind or blind site not occupied by a waterfowl permit holder one (1) hour before sunrise shall be available to another hunter on a first-come, first-served basis.

(2) Ballard WMA and Sloughs WMA waterfowl quota hunts.

(a) General procedures. A person applying to hunt in waterfowl quota hunts on Ballard WMA or Sloughs WMA shall:

1. Apply by completing the Ballard or Sloughs Waterfowl Quota Hunt online application on the department's Web site at fw.ky.gov;

2. Apply from September 1 through September 30;

3. Pay a three (3) dollar application fee for each application;

4. Select preferred **[hunt]** hunts or select the no-hunt option; and

5. Not apply more than one (1) time for each hunt.

(b) Preference points.

1. A quota hunt applicant who is not selected shall be given one (1) preference point.

2. A quota hunt applicant who selects the no-hunt option shall be given one (1) preference point.

3. A person who applies for the no-hunt option shall not be drawn for a waterfowl quota hunt.

4. An applicant may[can] accumulate preference points across years.

5. For each hunt:

a. A random selection of applicants with the highest number of preference points shall be made; and

b. If there are still openings, a random selection of applicants with the next highest number of preference points shall be made.

6. If selected for a quota hunt, a person shall lose all accumulated preference points.

7. A person shall forfeit all accumulated preference points if the person does not apply or is ineligible to apply for:

a. A waterfowl quota hunt; or

b. The no-hunt option.

(c) ~~[The commissioner may extend the application deadline.]~~ If technical difficulties with the automated application system prevent applications from being accepted for one (1) or more days during the application period, the commissioner may extend the application deadline.

(d) Ballard WMA waterfowl quota hunts.

1. A drawn hunter and special commission waterfowl permit holder shall[must] check in the morning of their hunt in person by 5 a.m. CST.

2. A drawn hunter and special commission waterfowl permit holder shall fill out the provided check-in card completely and accurately.

3. A random drawing of all drawn hunters and special commission waterfowl permit holders shall[will] begin after the check-in period.

4. A selected drawn hunter or special commission waterfowl permit holder shall choose from available hunting units or department blinds before the next applicant is drawn.

5. A drawn hunter or special commission waterfowl permit holder who selects a hunting unit or department blind becomes the waterfowl permit holder for that hunting unit or department blind.

6. Waterfowl permit holders may take up to three (3) guest hunters.

7. Selected hunting units or department blinds shall[will] not be available for the next drawn hunter.

8. Waterfowl hunt units or department blinds not claimed by drawn hunters shall[will] be available in a stand-by drawing.

(e) Sloughs WMA waterfowl quota hunts.

1. A drawn hunter shall be assigned a department blind or hunting unit and become waterfowl permit holders at the time of the drawing.

2. A waterfowl permit holder shall check in by midnight CST on the Sunday prior to their hunt by sending an email to sloughsquotahunt@ky.gov that[which] includes the waterfowl permit holder's name, hunt unit, hunt dates, and hunt confirmation number or forfeit their spot.

3. A waterfowl permit holder may take up to three (3) guest hunters.

4. Waterfowl hunt units or department blinds forfeited by waterfowl permit holders shall[will] be available in a stand-by drawing.

(3) Boatwright WMA limited-access waterfowl hunts.

(a) A person applying to hunt waterfowl on Boatwright WMA shall:

1. Apply by completing the online Boatwright WMA Waterfowl Quota Hunt Form process on the department's Web site at <https://app.fw.ky.gov/HuntDraw/Index>;

2. Apply during the period Wednesday through[thru] Sunday before their intended hunt period; and[.]

3. Be eighteen (18) years of age or older.[;]

(b) A drawn hunter shall be assigned a department blind or hunting unit and become a waterfowl permit holder at the time of the drawing.

(c) A waterfowl permit holder may surrender a Boatwright WMA department blind or hunting unit on the department's Web site at <https://app.fw.ky.gov/HuntDraw/Index>.

(d) A surrendered department blind or hunting unit shall[will] be assigned by the department to a new drawn hunter.

(e) A waterfowl permit holder shall[must] check in the morning of their hunt in person by 4:45 a.m. CST.

(f) A waterfowl permit holder shall fill out the provided check-in card completely and accurately.

(g) A waterfowl hunt unit or department blind not claimed by a drawn hunter shall[will] be available in a stand-by drawing.

(h) A waterfowl permit holder may take up to three (3) guest hunters.

(4) Stand-by drawings.

(a) Ballard WMA.

1. An applicant shall[must] apply in person before 5 a.m. CST the day of their intended hunt.

2. An applicant shall fill out the provided check-in card completely and accurately.

3. A random drawing for unclaimed department blinds or hunting units shall[will] be conducted following the drawing for drawn hunters.

4. A selected applicant shall[will] choose an available department blind or hunting unit and be designated as a waterfowl permit holder.

(b) Boatwright WMA.

1. An applicant shall[must] apply in person before 4:45 a.m. CST the day of their intended hunt.

2. An applicant shall fill out the provided check-in card completely and accurately.

3. A random drawing for an unclaimed department blind or hunting unit shall[will] occur after 4:45 a.m. CST.

4. Selected applicants shall[will] choose an available department blind or hunting unit and be designated waterfowl permit holder.

(c) Sloughs WMA.

1. An applicant shall[must] apply in person before 6 p.m. CST the Monday before their intended hunt.

2. An applicant shall fill out the provided check-in card completely and accurately.

3. A random drawing for an unclaimed department blind or hunting unit shall[will] occur after 6:00 p.m. CST.

4. Selected applicants shall[will] choose an available department blind or hunting unit and be designated as a waterfowl permit holder.

(5) A person shall be declared ineligible to hunt in department limited-access waterfowl hunts during the remaining portion of the regular waterfowl season and declared ineligible to hunt in or apply for any department limited-access hunt or department quota hunt the following year if the hunter violates state or federal regulations while waterfowl hunting on WMAs during a limited-access waterfowl hunt.

Section 5. State Parks. Waterfowl hunting shall be prohibited, except there shall be an open waterfowl hunt December 7 through January 31 on designated areas of state parks at:

(1) Greenbo Lake;

(2) Nolin Lake;

(3) Paintsville Lake; and

(4) Yatesville Lake.

Section 6. Youth-Mentor and Mobility-Impaired Waterfowl Hunts.

(1) There shall be youth-mentor waterfowl hunts on the Minor Clark and Peter W. Pfeiffer fish hatcheries each Saturday and Sunday in January.

(2) There shall be a mobility-impaired waterfowl hunt at Minor Clark Fish Hatchery that is held concurrently with each youth-mentor hunt.

(3) There shall be a waterfowl blind at Doug Travis WMA assigned by a random pre-season electronic drawing among all mobility-impaired applicants.

(4) A youth or mobility-impaired person shall:

(a) Apply on the department's Web site at [fw.ky.gov](https://app.fw.ky.gov/HuntDraw/Index) between November 1 and November 15; and

(b) Carry a department-provided selection notification on the

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day of the hunt.

(5) A mobility-impaired person shall carry a mobility-impaired access permit pursuant to 301 KAR 3:026.

(6) Each youth shall be accompanied by an adult who is eighteen (18) years or older.

(7) At the youth-mentor hunts:

(a) Each youth shall not be accompanied by more than one (1) adult; and

(b) One (1) adult may accompany two (2) youths.

(8) A person shall:

(a) Hunt from an established blind; and

(b) Not change blinds.

(9) A blind shall not be used by more than four (4) individuals.

(10) A person shall only discharge a firearm from a blind.

(11) A person shall not possess more than twenty-five (25) shotshells.

(12) A waterfowl hunter, mentor, or assistant shall immediately retrieve downed birds.

(13) A person shall encase a firearm if traveling to or from a blind.

(14) A hunter at Minor Clark or Peter Pfeiffer Fish Hatcheries shall:

(a) Cease hunting by noon; and

(b) Exit the area by 1 p.m.

(15) All decoys and equipment shall be removed at the end of each day's hunt.

(16) A hunter at Minor Clark or Peter Pfeiffer Fish Hatcheries shall report harvest by depositing a completed hunt permit at the designated location.

[Section 4. Definitions.

(1) "Blind" means a:

(a) Concealed enclosure;

(b) Pit; or

(c) Boat.

(2) "Department blind" means a permanently fixed blind structure built by the department.

(3) "Hunt site" means a specific location where waterfowl hunting is allowed, as approved by the department or the U.S. Army Corps of Engineers.

(4) "Layout blind" means a portable blind that when fully deployed allows one (1) person to be concealed above the surface of the ground.

(5) "Party" means:

(a) A person hunting alone; or

(b) Two (2) to four (4) people who share a department blind or hunt site.

(6) "Permanent blind" means a blind left in place by a waterfowl hunter longer than twenty-four (24) hours.

(7) "Regular waterfowl season" means the open waterfowl season that does not include the Light Goose Conservation Order or the September wood duck, teal, and Canada goose seasons as established in 301 KAR 2:221 and 2:225.

(8) "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.

Section 2. 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 for waterfowl hunting; or

(c) Shot larger than size "T".

Section 3.

(1) Except as established in this section or in Section 4 of this administrative regulation, on a Wildlife Management Area:

(a) A person hunting waterfowl shall not:

1. Establish or hunt from a permanent waterfowl blind; or

2. Hunt within 200 yards of:

a. Another occupied hunt site; or

b. Another legal waterfowl hunting party.

(b) A person shall not hunt in a designated recreation area or access point;

(c) More than four (4) persons shall not occupy a waterfowl blind or hunt site; and

(d) A hunter shall remove decoys and personal items daily, except that a hunter drawn for a multiday hunt may choose to leave decoys in place for the duration of the hunt.

(2) In order to establish or use a permanent waterfowl blind or hunt site on Lake Barkley, Barren River Lake, Buckhorn Lake, Green River Lake, Nolin River Lake, Paintsville Lake, Rough River Lake, Sloughs, or Doug Travis Wildlife Management Areas, a person:

(a) Shall first obtain a waterfowl blind permit from the U.S. Army Corps of Engineers or the department;

(b) May designate one (1) other person as a partner; and

(c) Shall not hold more than one (1) permit per area.

(3) A person who participates in a drawing for a hunt site permit shall:

(a) Be at least eighteen (18) years of age; and

(b) Possess:

1. A valid Kentucky hunting license;

2. A Kentucky migratory game bird and waterfowl permit; and

3. A federal duck stamp.

(4) The holder of a hunt site permit shall:

(a) Construct or establish the blind or hunt site before November 20 or forfeit the permit;

(b) Not lock a waterfowl blind; and

(c) Remove the blind and blind materials within thirty (30) days after the close of the regular waterfowl season or be ineligible for a permit the following year, unless an extension of time is granted by the department due to weather or water level conflicts.

(5) A permanent blind, department blind, or blind site not occupied by the permit holder one (1) hour before sunrise shall be available to another hunter on a first-come, first-served basis.

(6) A waterfowl blind restriction established in this section shall not apply to a falconer if a gun or archery season is not open.

Section 4. Wildlife Management Area Requirements.

(1) The regular waterfowl season provisions shall apply, as established in 301 KAR 2:221, except as established in this section.

(2) The provisions of this section shall not apply to a waterfowl hunting season that opens prior to October 15, as established in 301 KAR 2:225.

(3) A person shall not:

(a) Hunt on an area marked by a sign as closed to hunting;

(b) Enter an area marked by signs as closed to public access;

or

(c) Hunt a species on an area marked by signs as closed to hunting for that species.

(4) On Wildlife Management Areas in Ballard County:

(a) The shotgun shell possession limit shall be fifteen (15), except that the shotgun shell possession limit shall be twenty-five (25) if:

1. The daily bag limit for ducks is greater than three (3); and

2. The daily bag limit for Canada goose is greater than or equal to two (2); and

(b) At least one (1) person shall be eighteen (18) years of age or older if hunting in a department waterfowl blind or hunt site.

(5) At Ballard WMA:

(a) The duck, coot, merganser, and goose season shall be December 7 through January 31;

(b) Youth waterfowl season shall be the first full weekend in February;

(c) A person hunting waterfowl shall not hunt on Monday, Tuesday, Christmas Eve, Christmas Day, or New Year's Day; and

(d) A person hunting waterfowl shall:

1. Apply for the waterfowl quota hunt as established in Section 5 of this administrative regulation;

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2. Not hunt waterfowl on the Ohio River from fifty (50) yards upstream of Dam 53 to fifty (50) yards downstream from the southern border of Ballard WMA from October 15 through March 15;

3. Stop hunting and exit the hunting area by 2 p.m. during the regular waterfowl season, except as authorized by the department;

4. Check out of the area by accurately completing the Daily Post-Hunt Survey provided by the department and submitting the survey at the department-designated drop point by 3 p.m. the day of the hunt, or be declared ineligible to hunt at Ballard WMA for the remainder of the current and following waterfowl season; and

5. Hunt in close proximity to other hunt party members so that each member of the party is within twenty-five (25) feet of another party member and no two (2) party members are more than 100 feet apart.

(6) At Boatwright WMA, including the Olmsted, Peal, and Swan Lake units:

(a) A party shall:

1. Not hunt on Monday, Tuesday, Christmas Eve, Christmas Day, or New Year's Day;

2. Obtain a daily check-in card by 8 a.m. before entering the area from December 7 through January 31; and

3. Check out the same day by:

a. Visiting the designated check station prior to 8 a.m.; or

b. Depositing the check-in card at a department-designated drop point after 8 a.m.;

(b) Duck season shall be open one-half (1/2) hour before sunrise to sunset beginning Thanksgiving Day for four (4) consecutive days on areas of Boatwright WMA that are open to hunting;

(c) A department blind or hunt site shall be assigned through a daily drawing from December 7 through January 31;

(d) A department blind or hunt site shall be offered to another hunter on a first-come, first-served basis, if the blind or hunt site has not been assigned during the daily drawing;

(e) Waterfowl hunters shall exit the area by 2 p.m. during the regular waterfowl season;

(f) A boat blind shall not be permitted in flooded timber, except:

1. During periods of flood if no other access is possible; or

2. A mobility-impaired hunter may hunt from a boat; and

(g) A party shall only hunt waterfowl:

1. From a department blind; or

2. From layout blinds set so that all layout blinds in the party lie within a twenty-five (25) foot radius from the center of the party, and within 200 yards of a hunt site during the regular waterfowl season.

(7) On the Peal unit of Boatwright WMA:

(a) More than seven (7) parties shall not hunt at the same time on Buck Lake or Flat Lake;

(b) More than four (4) parties shall not hunt at the same time on Fish Lake;

(c) More than three (3) parties shall not hunt at the same time on First Lake or Second Lake; and

(d) A party shall not hunt waterfowl except within twenty-five (25) feet of a hunt site during the regular waterfowl season.

(8) On the Swan Lake Unit of Boatwright WMA:

(a) A person shall not hunt waterfowl from Thanksgiving Day through December 6;

(b) The area open to hunting during the regular waterfowl season shall be open for the Light Goose Conservation Order season as established in 301 KAR 2:221; and

(c) Blind restrictions shall not apply to the Light Goose Conservation Order season.

(9) Lake Barkley WMA.

(a) A permanent blind shall only be established within ten (10) yards of a blind site.

(b) Waterfowl refuge areas:

1. The area west of the Cumberland River channel, as marked by buoys, between river mile 51, at Hayes Landing Light, south to the Tennessee Valley Authority's power transmission lines at river mile 55.5, shall be closed from November 1 through February 15; and

2. The area within Honker Bay and Fulton Bay, as marked by

buoys and signs, shall be closed from November 1 through March 15.

(c) A person shall not hunt from October 15 through March 15:

1. On Duck Island; or

2. Within 200 yards of Duck Island.

(10) Barren River Lake WMA. A person hunting waterfowl:

(a) May use a breech-loading shotgun along the shoreline of the Peninsula Unit; and

(b) Shall not use a breech-loading firearm elsewhere on the area.

(11) Big Rivers WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(12) Cedar Creek WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(13) Miller-Welch-Central Kentucky WMA. A person shall not hunt waterfowl from October 15 through January 14.

(14) Lake Cumberland WMA. The following sections shall be closed to the public from October 15 through March 15:

(a) The Wesley Bend area, bounded by Fishing Creek, Beech Grove Road, and Fishing Creek Road; and

(b) The Yellowhole area, bounded by Fishing Creek Road and Hickory Nut Road.

(15) Dix River WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(16) Doug Travis WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(c) A person hunting waterfowl shall exit the area by 2 p.m. during waterfowl season, except as authorized by the department.

(d) On Black Lake, Fish Lake, Forked Lake, Indian Camp Lake, Number Four Lake, Town Creek Moist Soil Unit, and Upper Goose Lake, all waterfowl hunting after November 1 shall be:

1. From hunt sites assigned by a random preseason drawing; and

2. Within ten (10) yards of a hunt site, including periods of Mississippi River flooding.

(17) Grayson Lake WMA. A person shall not hunt waterfowl:

(a) Within the no-wake zone at the dam site marina;

(b) From the shore of Camp Webb;

(c) On Deer Creek Fork; or

(d) Within three-quarters (3/4) of a mile from the dam.

(18) Green River Lake WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(19) Kaler Bottoms WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(20) Kentucky River WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(21) Land Between the Lakes National Recreation Area.

(a) The following portions shall be closed to the public from November 1 through March 15:

1. Long Creek Pond;

2. The eastern one-third (1/3) of Smith Bay, as marked by buoys; and

3. The eastern two-thirds (2/3) of Duncan Bay, as marked by buoys.

(b) The following portions shall be closed to waterfowl hunting:

1. The Environmental Education Center; and

2. Energy Lake.

(c) A person shall possess an annual Land Between the Lakes Hunting Permit if hunting waterfowl:

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1. Inland from the water's edge of Kentucky Lake or Barkley Lake; or

2. From a boat on a flooded portion of Land Between the Lakes when the lake level is above elevation 359.

(d) A person shall not hunt waterfowl on inland areas during a quota deer hunt.

(e) A person shall not establish or use a permanent blind:

1. On an inland area; or
2. Along the Kentucky Lake shoreline of Land Between the Lakes.

(f) A person hunting waterfowl shall remove decoys and personal items daily.

(22) Obion Creek WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(23) Ohio River Islands WMA.

(a) A person shall not hunt from October 15 through March 15 on the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to the power line crossing at approximately river mile 911.5.

(b) Stewart Island shall be closed to public access from October 15 through March 15.

(c) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(d) A person shall not enter a hunting area prior to 4 a.m. daily.

(24) Peabody WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(c) The following areas, as posted by signs, shall be closed to the public from October 15 through March 15:

1. The Sinclair Mine area, bounded by Hwy 176, the haul road, and Goose Lake Road; and
2. The Ken area, bounded by Wysox Road, H2 Road, H1 Road, and H6 Road.

(25) Pioneer Weapons WMA. A person hunting waterfowl:

(a) May use a breech-loading shotgun along the shoreline of Cave Run Lake; and

(b) Shall not use a breech-loading firearm elsewhere on the area.

(26) Robinson Forest WMA. The main block of the WMA shall be closed to waterfowl hunting.

(27) Sloughs WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(c) A person hunting waterfowl shall exit the area by 2 p.m. during the regular waterfowl season.

(d) On the Highlands Creek and Grassy Pond Powell's Lake units, a person hunting waterfowl shall:

1. Hunt:
 - a. From a department blind;
 - b. Within twenty-five (25) yards of a hunt site; or
 - c. No closer than 200 yards of another hunting party; and
2. Remove decoys and personal items from the area on a daily basis.

(e) If the Ohio River reaches a level that requires boat access, a waterfowl hunter:

1. May hunt from a boat without regard to department blinds; and
2. Shall not hunt closer than 200 yards from another boat.

(f) If hunting waterfowl on the Crenshaw and Duncan Tracts of the Sauerheber Unit or the Jenny Hole Unit:

1. A person shall not hunt on a Tuesday or Wednesday;
2. A person shall hunt from a blind or a hunt site assigned by the department through a drawing as established in Section 5 of this administrative regulation;
3. A person shall not possess more than fifteen (15) shotgun shells, except that the shotgun shell possession limit shall be twenty-five (25) if:
 - a. The daily bag limit for ducks is greater than three (3); and
 - b. The daily bag limit for Canada goose is greater than or equal

to two (2);

4. If under eighteen (18) years of age, a person shall be accompanied by an adult.

(g) The Crenshaw and Duncan tracts of the Sauerheber Unit shall be closed to hunting except for:

1. Waterfowl from November 1 through March 15; and

2. The modern gun deer season.

(h) The remainder of the Sauerheber Unit shall be closed to the public from November 1 through March 15.

(i) The Jenny Hole Unit shall be closed to boats from Thanksgiving Day through the last Sunday in January, except for persons participating in department-managed activities.

(j) A hunter participating in a quota waterfowl hunt at Sloughs WMA shall:

1. Hunt in close proximity to other hunt party members so that each member of the party is within twenty-five (25) feet of another party member and no two (2) party members are more than 100 feet apart; and

2. Check out of the area by accurately completing the Daily Post-Hunt Survey provided by the department and submitting the survey at the designated drop point by 3 p.m. the day of the hunt or be ineligible to hunt at Sloughs WMA for the remainder of the current and following waterfowl season.

(28) South Shore WMA.

(a) The WMA shall be closed to hunting from November 15 through January 15, except for waterfowl and dove hunting.

(b) A hunter shall use a department blind.

(c) A department blind shall be available daily on a first-come, first-served basis.

(29) Taylorsville Lake WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(30) Yatesville Lake WMA. 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 from the mouth of the Greenbrier Creek embayment to the dam, including the island.

(31) Yellowbank WMA. The area designated by a sign and painted boundary marker shall be closed to the public from October 15 through March 15.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(32) J.C. Williams WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

Section 5. Ballard WMA and Sloughs WMA Quota Hunts.

(1) A person applying to hunt waterfowl on Ballard WMA or the Sauerheber Unit of Sloughs WMA shall:

(a) Apply by completing the online Ballard or Sloughs Waterfowl Quota Hunt Form process on the department's Web site at fw.ky.gov;

(b) Apply from September 1 through September 30;

(c) Pay a three (3) dollar application fee for each application; and

(d) Not apply more than one (1) time for each hunt.

(2) A person drawn to hunt at Sloughs WMA shall check in on the Sunday prior to their hunt on the department's Web site at fw.ky.gov.

(3) A person drawn to hunt may bring up to three (3) additional hunters.

(4) A person shall be declared ineligible to hunt in department waterfowl quota hunts during the remaining portion of the waterfowl season and declared ineligible to apply for any department quota hunt the following year if the hunter violates state or federal regulations while waterfowl hunting on WMAs that have a preseason or daily drawing.

(5) A party applying to hunt waterfowl on the Jenny Hole Unit of Sloughs WMA shall:

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- (a) Apply by attending a weekly on-site drawing at the WMA; and
- (b) Designate any other party members, if applicable, prior to the drawing.
- (6) A party drawn to hunt on the Jenny Hole Unit of Sloughs WMA, as established in subsection (5) of this section, shall not be allowed to change any party members after being drawn.

Section 6. State Parks.

- (1) Waterfowl hunting shall be prohibited, except there shall be an open waterfowl hunt December 13 through January 31 on designated areas of state parks at:
 - (a) Greenbo Lake;
 - (b) Lake Barkley;
 - (c) Lincoln Homestead;
 - (d) Nolin Lake;
 - (e) Paintsville Lake; and
 - (f) Yatesville Lake.
- (2) Hunters shall check in and out each day at the designated check station.
- (3) During check-in, hunters shall be provided a map showing designated areas of the park that are open to waterfowl hunting.

Section 7. Youth-Mentor and Mobility-Impaired Waterfowl Hunts.

- (1) There shall be youth-mentor waterfowl hunts on the Minor Clark and Peter W. Pfeiffer fish hatcheries each Saturday and Sunday in January.
- (2) There shall be a mobility-impaired waterfowl hunt at Minor Clark Fish Hatchery that is held concurrently with each youth-mentor hunt.
- (3) There shall be a waterfowl blind at Doug Travis WMA assigned by a random pre-season electronic drawing among all mobility-impaired applicants.
- (4) A youth or mobility-impaired person shall:
 - (a) Apply on the department's Web site at fw.ky.gov between November 1 and November 15; and
 - (b) Carry a department provided postcard notification on the day of the hunt.
- (5) A mobility-impaired person shall carry a mobility-impaired access permit pursuant to 301 KAR 3:026.
- (6) Each youth shall be accompanied by an adult who is eighteen (18) years or older.
- (7) At the youth-mentor hunts:
 - (a) Each youth shall not be accompanied by more than one (1) adult; and
 - (b) One (1) adult may accompany two (2) youths.
- (8) A person shall:
 - (a) Hunt from an established blind; and
 - (b) Not change blinds.
- (9) A blind shall not be used by more than four (4) hunters.
- (10) A person shall only discharge a firearm from a blind.
- (11) A person shall not possess more than twenty-five (25) shotshells.
- (12) A waterfowl hunter, mentor, or assistant shall immediately retrieve downed birds.
- (13) A person shall encase a firearm if traveling to and from a blind.
- (14) A hunter at Minor Clark or Peter Pfeiffer Fish Hatcheries shall:
 - (a) Cease hunting by noon; and
 - (b) Exit the area by 1 p.m.
- (15) All decoys and equipment shall be removed at the end of each day's hunt.
- (16) A hunter at Minor Clark or Peter Pfeiffer Fish Hatcheries shall report harvest by depositing a completed hunt permit at the designated location.]

Section 7.[Section 8.] Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "Daily Post-hunt Survey", 2023 edition;["Sloughs WMA Waterfowl Hunter Survey Report", 2014 edition;]
 - (b) "Ballard or Sloughs Waterfowl Quota Hunt Form", 2014

edition;

- (c) "Boatwright WMA Waterfowl Quota Hunt Form", 2023 edition;

(d) "Hatcheries Youth-Mentor/Mobility-Impaired Canada Goose Hunt Application", 2017 edition; and

- (e)[(d)] "Doug Travis WMA Mobility-Impaired Waterfowl Hunt Application", 2017 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 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be found on the department's Web site at fw.ky.gov.

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.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division for Air Quality (As Amended at ARRS, June 13, 2023)

401 KAR 58:040. Requirements for asbestos abatement entities.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 224.99-010, 29 C.F.R. 1910.1001, 40 C.F.R. 61.152

STATUTORY AUTHORITY: KRS 224.10-100(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes[requires] the [Environmental and Public Protection—]cabinet to promulgate[prescribe] administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the control of asbestos emissions from asbestos abatement projects.

Section 1. Definitions. As used in this administrative regulation, all terms not defined in this section[herein] shall have the meaning given them in 401 KAR 50:010 or 401 KAR 58:025.

(1) "Air lock" means a system of enclosures within the containment area consisting of two (2) doorways, curtained with polyethylene sheeting, at least three (3) feet apart.

(2) "Asbestos abatement entity" means a partnership, firm, association, corporation, sole proprietorship,[,] or other business concern, any governmental agency, or any other organization, composed of one (1) or more employees or members, or an individual involved in any of the asbestos-related activities established[specified] in subsection (3) of this section.

(3) "Asbestos abatement project" means any facility renovation or demolition activity that could[at a facility which may] cause a disturbance of friable asbestos material.

(4) "Certificate" means a permit issued by the cabinet pursuant to KRS 224.10-100(19)(b) to allow an asbestos abatement entity to engage in asbestos abatement projects, including the use of equipment or practices that control the emissions of asbestos fibers into the outside air.

(5) "Certification fee" means a fee, established by the cabinet pursuant to KRS 224.10-100(20), for the issuance of certificates to asbestos abatement entities according to this administrative regulation.

(6) "Clean room" means an uncontaminated area or room that[which] is part of the worker decontamination enclosure system with provisions for storage of workers' street clothes and clean protective equipment.

(7) "Clearance air monitoring" means the monitoring of air conducted inside the work area after cleanup of an asbestos abatement project has been completed.

(8) "Containment area" means the entire area in which an asbestos abatement project is conducted,[,] including the work area, equipment room, shower room, clean room, and all associated air locks.

(9) "Demolition" means the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations.

(10) "Emergency operation" means a renovation operation that was not planned but results from a sudden, unexpected event. This term includes operations necessitated by nonroutine failures of equipment.

(11) "Equipment room" means a contaminated area or room that/which is part of the worker decontamination enclosure system with provisions for storage of contaminated clothing and equipment.

(12) "Facility" means an institutional, commercial, or industrial structure, installation, or building, excluding apartment buildings having no more than four (4) dwelling units.

(13) "Facility component" means a:

(a) Pipe, duct, boiler, tank, reactor, turbine, or furnace at or in a facility; or (a)

(b) Structural member of a facility.

(14) "Friable asbestos material" means material containing more than one (1) percent asbestos by weight that hand pressure can crumble, pulverize, or reduce to powder when dry.

(15) "Glove bag" means a manufactured device consisting of plastic with a thickness of six (6) mils or more, two (2) inward-projecting long-sleeve rubber gloves, one (1) inward-projecting water-wand sleeve, an internal tool pouch, and an attached, labeled receptacle for asbestos waste. The glove bag is constructed and installed so that it surrounds the object or area from which the asbestos containing material is to be removed, and contains all asbestos fibers released during the removal process.

(16) "Glove bag technique" means a method of removing asbestos from pipes, ducts, valves, joints, and other nonplanar surfaces, which uses one (1) or more glove bags.

(17) "HEPA filtration" means high efficiency particulate air filtration found in respirators and vacuum systems capable of filtering particles greater than or equal to three-tenths (0.3) microns in size, with 99.97 percent efficiency.

(18) "HVAC" means a heating, ventilation, and air conditioning system.

(19) "Lockdown agent" means a protective coating or sealant that/which is applied to a surface from which asbestos-containing material has been removed.

(20) "OSHA" means the Occupational Safety and Health Administration.

(21) "Polyethylene sheeting" or "polyethylene bags" means sheeting or bags of polyethylene plastic with a thickness of six (6) mils or more, except as otherwise **established in this administrative regulation[specified]**.

(22) "Publicly owned facility" means a facility owned by the state, or any political subdivision thereof, municipality, or other public entity.

(23) "Renovation":

(a) Means altering in any way one (1) or more facility components; and

(b) **Does not mean** operations in which load-supporting structural members are wrecked or taken out **[are excluded]**.

(24) "Shower room" means a room between the clean room and the equipment room in the worker decontamination enclosure system with hot and cold running water controllable at the tap and suitably arranged for complete showering during decontamination.

(25) "Structure" means a whole facility, building, or a major portion thereof, such as a building wing.

(26) "Work area" means the contaminated area within the containment area that contains the friable asbestos material that/which is to be abated.

Section 2. Applicability. (1)(a) Except as **established[provided]** in paragraph (b) of this subsection, the provisions of this administrative regulation shall apply to each asbestos abatement entity which is involved in any asbestos abatement project.

(b) An asbestos abatement entity shall not be required to obtain the certificate as required in Section 3 of this administrative

regulation or attend the training required in Section 10 of this administrative regulation in order to conduct asbestos abatement projects **that are not required to comply with[which are not subject to]** the provisions of 401 KAR 58:025, **[however,]** The asbestos abatement[that] entity shall comply with the provisions of Sections 4(3) and 12 of this administrative regulation **if performing these[when performing such]** projects.

(2) Any person may request that the cabinet determine **if/whether** a project is an asbestos abatement project. **The[Such a]** request shall include the type of disturbance involved, a description of the friable asbestos materials, and laboratory data sheets with bulk sample results, methods of analysis, and the signature of the analyst. The cabinet shall make its determination **based on the information in the request in compliance with this administrative regulation and 401 KAR 58:025**, in writing, not later than ten (10) working days after it has received a written request with complete and accurate information adequate to make a determination.

[Section 2.] [Definitions. As used in this administrative regulation, all terms not defined herein shall have the meaning given them in 401 KAR 50:010 or 401 KAR 58:025.]

[(1)] ["Air-lock" means a system of enclosures within the containment area consisting of two (2) doorways, curtained with polyethylene sheeting, at least three (3) feet apart.]

[(2)] ["Asbestos abatement project" means any renovation or demolition activity at a facility which may cause a disturbance of friable asbestos material.]

[(3)] ["Asbestos abatement entity" means any partnership, firm, association, corporation, sole proprietorship, or other business concern, any governmental agency, or any other organization, composed of one (1) or more employees or members, or any individual involved in any of the asbestos-related activities specified in subsection (2) of this section.]

[(4)] ["Certificate" means a permit issued by the cabinet pursuant to KRS 224.10-100(19) to allow an asbestos abatement entity to engage in asbestos abatement projects, including the use of equipment or practices that control the emissions of asbestos fibers into the outside air.]

[(5)] ["Certification fee" means a fee established by the cabinet pursuant to KRS 224.10-100(20) for the issuance of certificates to asbestos abatement entities according to the provisions of this administrative regulation.]

[(6)] ["Clean room" means an uncontaminated area or room which is part of the worker decontamination enclosure system with provisions for storage of workers' street clothes and clean protective equipment.]

[(7)] ["Clearance air monitoring" means the monitoring of air conducted inside the work area after cleanup of an asbestos abatement project has been completed.]

[(8)] ["Containment area" means the entire area in which an asbestos abatement project is conducted; this includes, but is not limited to, the work area, equipment room, shower room, clean room, and all associated air locks.]

[(9)] ["Demolition" means the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations.]

[(10)] ["Emergency operation" means a renovation operation that was not planned but results from a sudden, unexpected event. This term includes operations necessitated by nonroutine failures of equipment.]

[(11)] ["Equipment room" means a contaminated area or room which is part of the worker decontamination enclosure system with provisions for storage of contaminated clothing and equipment.]

[(12)] ["Facility" means any institutional, commercial, or industrial structure, installation, or building, excluding apartment buildings having no more than four (4) dwelling units.]

[(13)] ["Facility component" means any pipe, duct, boiler, tank, reactor, turbine, or furnace at or in a facility; or any structural member of a facility.]

[(14)] ["Friable asbestos material" means any material containing more than one (1) percent asbestos by weight that hand pressure can crumble, pulverize, or reduce to powder when dry.]

[15)] "Glove bag" means a manufactured device consisting of plastic with a thickness of six (6) mils or more, two (2) inward-projecting long-sleeve rubber gloves, one (1) inward-projecting water-wand sleeve, an internal tool pouch, and an attached, labeled receptacle for asbestos waste. The glove bag is constructed and installed in such a manner that it surrounds the object or area from which the asbestos-containing material is to be removed, and contains all asbestos fibers released during the removal process.]

[16)] "Glove bag technique" means a method of removing asbestos from pipes, ducts, valves, joints, and other nonplanar surfaces, which uses one (1) or more glove bags.]

[17)] "HEPA filtration" means high efficiency particulate air filtration found in respirators and vacuum systems capable of filtering particles greater than or equal to three-tenths (0.3) microns in size, with 99.97 percent efficiency.]

[18)] "HVAC" means a heating, ventilation, and air conditioning system.]

[19)] "Lockdown agent" means a protective coating or sealant which is applied to a surface from which asbestos-containing material has been removed.]

[20)] "OSHA" means the Occupational Safety and Health Administration.]

[21)] "Polyethylene sheeting" or "polyethylene bags" means sheeting or bags of polyethylene plastic with a thickness of six (6) mils or more, except as otherwise specified.]

[22)] "Publicly owned facility" means any facility owned by the state, or any political subdivision thereof, municipality, or other public entity.]

[23)] "Renovation" means altering in any way one (1) or more facility components. Operations in which load-supporting structural members are wrecked or taken out are excluded.]

[24)] "Shower room" means a room between the clean room and the equipment room in the worker decontamination enclosure system with hot and cold running water controllable at the tap and suitably arranged for complete showering during decontamination.]

[25)] "Structure" means a whole facility, building, or a major portion thereof, such as a building wing.]

[26)] "Work area" means the contaminated area within the containment area that contains the friable asbestos material which is to be abated.]

Section 3. Prohibition. Except as established in Section 2(1)(b) of this administrative regulation, an [No] asbestos abatement entity shall not engage in any asbestos abatement project that would be under the requirements of subject to [which is subject to the provisions of] 401 KAR 58:025 after April 1, 1988, unless:

(1) A certificate to [so-]engage in an asbestos abatement project [such projects] has been issued by the cabinet in accordance with [the provisions of] this administrative regulation[,] and is currently in effect. [The provisions of-] This subsection shall not apply during the [demonstration of-] compliance demonstration required in Section 6(2) of this administrative regulation; and [.]

(2) At least one (1) person as established [identified] in Section 10(1) of this administrative regulation is in attendance at the site of the containment area during the execution of the project.

Section 4. Work Practice Requirements. (1) [Except as specified,] The work practice requirements of subsections (2) and (3)(2 and 3) of this section shall apply to asbestos abatement entities [which perform the indicated asbestos abatement projects]. [The provisions of-] This section shall not apply to an asbestos abatement entity that performs [asbestos abatement entities which perform] asbestos abatement projects at the entities' own manufacturing or industrial facilities if [when] the project is [projects are] performed exclusively by employees of the manufacturer or industry.

(2) [(4)] Work practice requirements for renovations established [addressed] in 401 KAR 58:025. Except as established in subsection (5) of this section, an [Any] asbestos abatement entity that engages in an [any] asbestos abatement project, including emergency operations under the requirements

off, [which is determined to be-] subject to [the provisions of-] 401 KAR 58:025, and that involves renovation shall comply with the following [work practice requirements established in paragraphs (a) through (v) of this subsection. [.]

(a) All objects and exposed surfaces in the work area shall be cleaned. Movable objects may then be removed. Objects not removed from the work area shall be covered with polyethylene sheeting secured in place. All openings within the containment area, including windows, doorways, elevator openings, corridor entrances, drains, ducts, grills, grates, diffusers, skylights, and openings created by the construction of any barriers, shall be sealed with polyethylene sheeting. Containment areas shall be established by permanent walls extending from the floor to the ceiling, or where permanent walls do not exist, by barriers. Barriers shall be constructed of polyethylene sheeting attached securely in place.

(b) Floor sheeting shall be installed within the containment area and shall be [consist of] at least two (2) layers of polyethylene sheeting. Floor sheeting shall extend up side walls at least twelve (12) inches and shall be sized to minimize seams. Seams [No seams] shall not be located at wall-to-floor joints.

(c) Wall sheeting shall be installed throughout the containment area [according to the procedures specified in this paragraph]. All wall sheeting shall be [consist of] polyethylene sheeting, with each layer [having a thickness of-] at least four (4) mils thick, shall be securely installed to minimize seams, and shall extend beyond each wall-to-floor joint at least twelve (12) inches. [No-] Seams shall not be located at wall-to-wall joints.

1. Within the work area. Wall sheeting on a permanent wall shall be [consist of] at least two (2) layers. Wall sheeting on a barrier shall be [consist of] at least one (1) layer.

2. Within all other areas of the containment area. Wall sheeting on a permanent wall shall be [consist of] at least one (1) layer. [No] Wall sheeting shall not be [is] required where barriers are used.

(d) A worker decontamination enclosure system shall be provided, consisting of a clean room, shower room, and equipment room, each separated from each other and from the work area by air locks and accessible through doorways protected with two (2) overlapping polyethylene sheets.

(e) All HVAC equipment in or passing through the containment area shall be shut down, locked out, and tagged out to advise personnel not to activate the equipment. All intake and exhaust openings and any seams in system components shall be sealed with polyethylene sheeting and waterproof tape.

(f) A warning sign [Warning signs] shall be displayed at each approach [all approaches] to any location where airborne fiber levels can be expected to exceed background levels. Warning signs shall conform with OSHA 29 C.F.R. 1910.1001 standards [specifications]. [Such signs shall be of a vertical format measuring twenty (20) inches in length and fourteen (14) inches in width, and shall contain the following information which shall be printed in letters of sufficient size and contrast as to be readily visible and legible:] [DANGER-ASBESTOS-CANCER-AND LUNG DISEASE- HAZARD- AUTHORIZED- PERSONNEL- ONLY- RESPIRATORS- AND- PROTECTIVE CLOTHING ARE REQUIRED IN THIS AREA]

(g) Negative pressure ventilation units with HEPA filtration and in sufficient number to provide one (1) workplace air change every fifteen (15) minutes shall operate [be operated] continuously for the duration of the project. The duration of the project [for this requirement-] shall be [considered to be] from the time that a containment area is established and wall and floor sheeting are installed until [through the time that] acceptable final clearance air monitoring results are obtained.

(h) All friable asbestos material shall be thoroughly wetted through to the substrate prior to removal.

(i) Facility components shall be removed intact or in large sections if [whenever] possible and shall be carefully lowered to the floor. Other friable asbestos material shall be removed in small sections.

(j) Materials located at heights greater than fifteen (15) feet but less than or equal to fifty (50) feet above the floor shall be dropped into inclined chutes or onto scaffolding or containerized at their

elevated levels for eventual disposal. For materials more than~~[located at heights greater than]~~ fifty (50) feet above the floor, a dust-tight enclosed chute shall be constructed to transport removed material to containers on the floor.

(k) ~~[At no time shall the]~~ Friable asbestos material that has been removed shall not be allowed to accumulate or become dry.

(l) For porous surfaces ~~[that have been]~~ stripped of friable asbestos materials, a lockdown agent shall be applied to securely seal any residual fibers~~[that may be present]~~. The lockdown agent ~~shall~~should be chosen so as to be compatible with subsequent covering.

(m) Following abatement, wall sheeting and floor sheeting shall be removed and containerized for disposal. A sequence of HEPA filtration vacuuming, wet wiping all exposed surfaces, and surface drying shall be performed until ~~[no]~~ visible residue is not observed in the work area. A minimum of twenty-four (24) hours after wet wiping shall be required to ensure that sufficient drying has occurred.

(n) All asbestos-containing waste, except for large facility components, shall be thoroughly wetted before being placed into containers for disposal. Large components shall be thoroughly wetted before being wrapped in polyethylene sheeting for disposal. Disposal shall occur at locations identified in paragraph (u) of this subsection.

(o) Wet asbestos-containing waste shall be double bagged in polyethylene bags placed in sealed, rigid containers such as steel drums, fiber drums, or heavy cardboard boxes~~[(for example: steel drums, fiber drums, or heavy cardboard boxes)]~~ for transport to the approved landfill identified in paragraph (u) of this subsection. Large facility components shall alternatively~~[may]~~ be wrapped in at least two (2) layers of polyethylene sheeting, which shall be~~are~~ secured with waterproof tape for disposal.

(p) All polyethylene sheeting ~~[that is]~~ used in an asbestos abatement project shall be treated as asbestos-containing waste.

(q) All wrapping or containerizing of asbestos-containing waste shall be completed~~[done]~~~~[in such a manner so as]~~ to prevent the outside of the wrapping or container from being contaminated with asbestos fibers.

(r) All packaged wastes including boxes, drums, and wrapped components~~[(boxes, drums, and wrapped components)]~~ shall be labeled in accordance with~~[according to the provisions of]~~ 40 C.F.R. 61.152, as referenced~~[adopted]~~~~[filed]~~ [by reference] ~~in~~ 401 KAR 58:025.

(s) Clearance air monitoring shall be performed. At least five (5) samples of air per work area, or one (1) sample per room, whichever is greater, shall be obtained for the clearance air monitoring. A sample volume of 3,000 liters of air shall be used. The air samples shall be obtained while~~[when]~~ the air is being artificially circulated so ~~[that]~~ the fibers remain airborne during the sampling. Barriers shall not be dismantled, and openings shall not be uncovered, until the final samples show total fiber concentrations of less than or equal to 0.01 fibers per cubic centimeter of air. The method for determining compliance with ~~[the provisions of]~~ this paragraph shall be either of the methods established~~[specified]~~ in Appendix M to ~~["]~~Guidance for Controlling Asbestos-Containing Materials in Buildings~~["]~~ (U.S. Environmental Protection Agency, Office of Pesticides and Toxic Substances, EPA 560/5-85-024, June 1985).~~[Appendix M, "Detailed Specifications for Sampling and Analyzing Airborne Asbestos," is hereby adopted and filed herein by reference.]~~

[4.] Copies of Appendix M to "Guidance for Controlling Asbestos-Containing Materials in Buildings" are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.]

[2.] Copies of the material incorporated by reference in this administrative regulation shall be available for public review at the offices of the Division for Air Quality as listed in 401 KAR 50:015.]

(t) Transport and disposal of asbestos-containing waste shall ~~[occur in a manner that will]~~ not ~~[permit the]~~ release ~~[of]~~ asbestos fibers into the outside air.

(u) Disposal shall occur at a site approved by~~[that has approval from]~~ the Division of Waste Management to accept asbestos-containing waste in accordance with 401 KAR Chapter

47~~[according to the provisions of Title 401, Chapter 47,]~~ and shall meet all other applicable local, state, and federal laws.

(v) The asbestos abatement entity shall submit copies of all results of sampling obtained during clearance air monitoring and all disposal receipts to the building owner and the cabinet.

(3) [(2)] Work practice requirements for demolitions addressed in 401 KAR 58:025. An~~[Any]~~ asbestos abatement entity that engages in any asbestos abatement project that is under the requirements of ~~[which is determined to be]~~ subject to 401 KAR 58:025 and that involves demolition shall comply with the ~~[following]~~ work practice requirements established in paragraphs (a) through (d) of this subsection.]

(a) Any partial or full demolition of a structure ~~[or portion of a structure]~~ that~~[which]~~ contains facility components composed of or covered by friable asbestos material shall be removed~~[be preceded by a removal of all such materials]~~ prior to demolition, according to the requirements of subsection (2) [(1)] of this section.

(b) Instead~~[In lieu]~~ of the requirements established~~[specified]~~ in subsection (2) [(1)](a), (b), (c), (e), and (l) of this section, asbestos abatement entities engaging in demolition activities shall comply with the following requirements.

1. Before beginning a demolition project, seal off with polyethylene sheeting and waterproof tape, all doors, windows, floor drains, vents, and other openings to the outside of the building and to areas within the building that do not contain asbestos materials~~;~~ shall be sealed off with polyethylene sheeting and waterproof tape; and

2. Ensure that, if a structure is to be partially demolished, all HVAC equipment in the demolition area or passing through it but servicing areas of the building that~~[which]~~ will remain, shall be shut down, locked out, tagged out to advise personnel not to activate the equipment, and thoroughly sealed with polyethylene sheeting and waterproof tape.

(c) Clearance air monitoring as established~~[described]~~ in subsection (2) [(1)](s) of this section shall be required, following abatement activities conducted for demolition purposes, prior to demolition.

(d) All other requirements of subsection (2) [(1)] of this section, unless established~~[specified]~~~~[specifically deleted]~~ in paragraph (b) of this subsection, shall apply to demolition abatement activities.

(4) [(3)] An~~[Any]~~ asbestos abatement entity engaged in an asbestos abatement project, including emergency operations, not under~~[subject to]~~ the requirements of subsections (2) and (3) [(1) and (2)] of this section shall take reasonable precautions to prevent the release of asbestos fibers to the outside air. ~~[Such]~~ Precautions shall include~~;~~ but not be limited to:

(a) Construction of adequate barriers or use of wall and floor sheeting to contain asbestos fibers released within the containment area;

(b) Wetting of all friable asbestos materials prior to removal and keeping them wet until containerized;

(c) Use of HEPA filtration vacuum equipment and wet cleaning techniques to clean up the work area following the project until there is no visible residue;

(d) Appropriately wrapping or containerizing asbestos-containing waste and labeling the packaged waste including wrapped components, boxes, or fiber or metal drums~~[(wrapped components, boxes, or fiber or metal drums)]~~; and

(e) Transportation to and disposal at a location identified in subsection (2) [(1)](u) of this section in a manner that does not release fibers into the outside air.

(5) [(4)] Instead~~[In lieu]~~ of the work practice requirements of subsection (2) [(1)](a) through~~[to]~~ (e), (g), (i), (m), (n), (p), and (s) of this section~~;~~ if subsection (3) [(2)](b) and (c) of this section, and subsection (4) [(3)](a) and (c) of this section, the asbestos abatement entity may elect to use the glove bag technique for an asbestos abatement project. The glove bag technique~~[Such technique]~~ shall be~~[is]~~ an acceptable alternative to those requirements. The cabinet shall~~[may, on a case-by-case basis,]~~ approve other alternative work practice requirements for an asbestos abatement project if~~[provided that]~~ the asbestos abatement entity submits the alternative to the

requirements to the cabinet, in writing prior to beginning the asbestos abatement project, and demonstrates to ~~[the satisfaction of]~~ the cabinet that:

(a) Compliance with the requirements ~~established~~[prescribed] in this section is not practical or not feasible; and ~~[that]~~

(b) The proposed alternative to the requirements provides an equivalent control of asbestos and is not in conflict with any applicable local, state, or federal law.

Section 5. Applications. (1) ~~An~~[No] asbestos abatement entity shall not be considered for certification unless the training requirements of Section 10 of this administrative regulation have been completed prior to application.

(2) Applications for certification required under Section 3 of this administrative regulation shall be made on form DEP 7034, Application for Asbestos [Contractor] Certification/ Application ~~[a form prepared by the cabinet for such purpose and shall contain such information as the cabinet shall deem necessary to determine whether the certificate should be issued].~~

(3) Applications for certification shall be signed by an[a duly] authorized agent of the asbestos abatement entity. The[Such] signature shall constitute personal affirmation that the statements made in the application are true and complete.

(4) Failure to supply information required ~~[or deemed necessary]~~ by the cabinet to enable it to act upon the certification application shall result in denial of the certificate.

(5) An[Any] asbestos abatement entity ~~that~~[which] submits an application for certification shall include with the application a filing fee, as established[specified] in Section 8 of this administrative regulation.

Section 6. Consideration of Applications. (1) Within thirty (30) days after receipt of an application for certification, the cabinet shall advise the asbestos abatement entity as to whether or not the application is complete, and if not complete, what additional information is necessary in order to evaluate the application.

(2) Within fifteen (15) days after the application for certification is deemed complete, the cabinet shall contact the asbestos abatement entity to establish a date when the cabinet can witness an asbestos abatement project, which shall be performed by the entity to demonstrate compliance with ~~[the provisions of]~~ this administrative regulation.

(3) The cabinet shall make its application determination as established in subsection (5) of this section ~~[concerning the application]~~, including its approval or denial, within thirty (30) days after attendance at the asbestos abatement project demonstration, unless ~~[the cabinet determines that]~~ an additional period of time is necessary to adequately review the application or its evaluation of the demonstration. The cabinet shall notify the asbestos abatement entity, in writing, of the[its] determination and include any reasons for denial ~~[shall set forth its reasons for any denials].~~

(4) If the application is approved, the asbestos abatement entity shall submit the certification fee, as established[specified] in Section 8 of this administrative regulation. Upon receipt of the certification fee, the cabinet shall issue to the asbestos abatement entity the certificate to engage in asbestos abatement projects, in accordance with ~~[according to the provisions of]~~ this administrative regulation.

(5)(a) The cabinet shall deny an application for certification if: ~~[the cabinet determines that]~~

1. The requirements ~~[any provision]~~ of this administrative regulation or 401 KAR 58:025 ~~are~~[is] not met; ~~[if]~~

2. The asbestos abatement entity knowingly ~~[willfully]~~ made any misstatements in the application; ~~[or]~~, ~~[or if]~~

3. The owner or operator of an asbestos abatement entity ~~[is]~~ or an entity with a different name to which a certificate had previously been issued, cannot reasonably be expected to conduct the abatement ~~[himself]~~ ~~[or herself]~~ in a manner that is consistent with the acceptance of responsibility for asbestos abatement projects.

(b) The cabinet shall make determinations regarding issuance or denial of the certification based upon:

1. The applicant's actions during any prior term of certification; ~~[if]~~

2. The information contained in the application; ~~[if]~~ and

3. Any other pertinent information that is available to the cabinet.

(6) The holder of a certificate ~~[Certificates]~~ issued in accordance with Sections 5 and 6 ~~[Section 5]~~ of this administrative regulation ~~[hereunder]~~ shall comply with ~~[be subject to]~~ ~~the~~ ~~[such]~~ terms and conditions ~~[as set forth and embodied]~~ in the certificate ~~[as the cabinet shall deem necessary]~~ to ensure compliance with the requirements of this administrative regulation and of 401 KAR 58:025.

Section 7. Duration and Renewal of Certificates. (1) Unless the cabinet revokes a certificate, that certificate, including renewal of certification, shall remain in effect for one (1) year after the date of issuance.

(2) An[No] asbestos abatement entity shall not be considered for renewal of certification unless the training requirements of Section 10 of this administrative regulation have been completed prior to application.

(3) Applications for renewal of certification shall be made on form DEP 7034, Application for Asbestos [Contractor] Certification/ Application ~~[a form prepared by the cabinet for such purpose and shall contain such information as the cabinet shall deem necessary to determine whether the certificate should be issued].~~ An application ~~[applications]~~ for renewal shall be submitted not earlier than ninety (90) days and not later than thirty (30) days before the date of expiration.

(4) Applications for renewal of certification shall be signed by an[a duly] authorized agent of the asbestos abatement entity. The signature ~~[Such Signature]~~ shall constitute personal affirmation that the statements made in the application are true and complete.

(5) Failure to supply information required or deemed necessary by the cabinet to enable it to act upon the renewal application shall result in denial of ~~the~~ ~~[that]~~ renewal application.

(6) An[Any] asbestos abatement entity ~~that~~ ~~[which]~~ submits an application for renewal of certification shall include with the application a filing fee, as established ~~[specified]~~ in Section 8 of this administrative regulation.

(7) The cabinet shall make its renewal application determination as established in subsections (8) and (9) of this section ~~[concerning the application]~~, including its approval or denial, within thirty (30) days of receipt of a complete renewal application. The cabinet shall notify the asbestos abatement entity, in writing, of the ~~[its]~~ determination including ~~[and shall set forth]~~ its reasons for any denials.

(8) If the renewal is approved, the asbestos abatement entity shall submit the fee for renewal of certification, as established ~~[specified]~~ in Section 8 of this administrative regulation. Upon receipt of the fee, the cabinet shall issue to the asbestos abatement entity the renewed certificate to engage in asbestos abatement projects, in accordance with ~~[according to the provisions of]~~ this administrative regulation.

(9) The cabinet shall ~~[may]~~ deny an application for renewal of certification if the asbestos abatement entity has failed to comply fully with all applicable requirements of this administrative regulation or of 401 KAR 58:025 during the year preceding the renewal application.

Section 8. Fees. ~~[The provisions of]~~ This section shall not apply to any publicly owned facility, as defined by Section 1(22) ~~[in Section 1]~~ ~~[2]~~ of this administrative regulation. All fees shall be submitted to the cabinet as a certified check, cashier's check, or money order, payable to the Kentucky State Treasurer; ~~[if]~~ or may be submitted electronically online.

(1) Filing fee. Each asbestos abatement entity shall submit with the application for certification or renewal of certification, a filing fee, as established ~~[specified]~~ in paragraph (a) or (b) of this subsection. The filing ~~[Such]~~ fee shall not be ~~[is not]~~ refundable if the certification is denied or the application is withdrawn. The filing fee, shall be applied toward the certification or renewal fee if ~~[when]~~ the certificate is issued, pursuant to Section 6 or 7 of this administrative regulation.

(a) The filing fee for certification shall be \$100.

(b) The filing fee for renewal of certification shall be fifty (50) dollars.

(2) Certification or renewal fee. A fee as ~~established~~[specified] in paragraph (a) or (b) of this subsection, shall be submitted to the cabinet prior to the issuance of the certificate or renewed certificate to ~~an~~[any] asbestos abatement entity.

(a) The certification fee shall be \$500.

(b) The fee for renewal of certification shall be \$250.

Section 9. Certification Revocation. The cabinet may revoke any certification issued ~~pursuant to~~[under] this administrative regulation if the asbestos abatement entity:

(1) ~~Knowingly~~[Willfully] makes any misstatements or [knowingly] omits information in the certification application, renewal application, or any amendments thereto;

(2) Fails to comply with the terms or conditions of the certification;

(3) Fails to comply with the work practice requirements in Section 4 of this administrative regulation; or

(4) Fails to properly dispose of friable asbestos materials.

Section 10. Training Requirements. (1) ~~Except as established in Section 2(1)(b) of this administrative regulation and~~ as a part of the certification as required in Section 3 of this administrative regulation, the asbestos abatement entity shall ~~identify~~[provide] at least one (1) ~~supervisor~~[supervisory person] who ~~shall~~[will] be in attendance during the execution of each asbestos abatement project, and shall be trained with an initial training course ~~and an annual training course, both~~ approved by the cabinet ~~as established in Section 11 of this administrative regulation, and an annual retraining course approved by the cabinet.~~

(2) ~~A person established~~[Persons identified] in subsection (1) of this section shall be required to successfully complete a written examination, administered by the training sponsors, at the completion of the training or retraining course ~~[in order]~~ to demonstrate familiarity with ~~[those issues relevant to]~~ the safe performance of asbestos abatement activities. Correct ~~responses~~[response] to at least seventy (70) percent of the examination questions shall be necessary to meet the requirements of this subsection.

(3) As a part of the certification ~~pursuant to~~[as required in] Section 3 of this administrative regulation, ~~supervisors~~[persons] ~~established~~[identified] in subsection (1) of this section shall attend an orientation program sponsored by the cabinet, concerning the requirements, procedures, and standards established by this administrative regulation.

(4) If at any time, the ~~supervisor~~[supervisory person] ~~established~~[identified] in subsections (1) through (3) of this section is no longer employed by the ~~certified~~ asbestos abatement entity ~~[to which the certificate has been issued]~~, or is no longer in attendance during the execution of asbestos abatement projects ~~[for such entity]~~, the entity shall immediately notify the cabinet. The cabinet ~~shall~~[may] continue the certificate, ~~if based upon a showing that~~ there is another employee who has fulfilled the training requirements in this section, and who will be in attendance during the execution of asbestos abatement projects for the entity.

Section 11. Training Course Requirements. (1) The initial training course required in Section 10~~(4)~~ of this administrative regulation shall provide~~, as a minimum,~~ information on~~[the following topics]:~~

(a) The physical characteristics of asbestos, including fiber size, aerodynamic characteristics, and physical appearance;

(b) The health hazards of asbestos;

(c) Employee personal protective equipment;

(d) Recommended medical monitoring procedures, benefits of medical monitoring, and employee access to records;

(e) Air monitoring procedures;

(f) State-of-the-art work practices for asbestos abatement activities;

(g) Personal hygiene;

(h) Additional safety hazards that ~~could~~[may] be encountered during abatement activities and how to deal with them;

(i) The requirements, procedures, and standards established by federal regulations;

(j) Contract specifications and bidding procedures, liability insurance and bonding, and legal consideration related to asbestos abatement; and

(k) Establishing respiratory protection programs, medical surveillance programs, and U.S. EPA and OSHA recordkeeping requirements.

(2) The yearly retraining course required in Section 10(1) of this administrative regulation shall~~, as a minimum, adequately]~~ review the topics in subsection (1) of this section, update information on state-of-the-art procedures and equipment, and review regulatory changes and interpretations.

(3) The course ~~titled~~ [entitled "~~Supervision of Asbestos Abatement Projects,~~"] as approved by the U.S. EPA, shall satisfy the requirements for initial training and retraining courses, as ~~established~~[specified] in subsections (1) and (2) of this section.

(4) Training courses, ~~except~~[other than] the course ~~established~~[referenced] in subsection (3) of this section, may be approved by the cabinet ~~[on a case-by-case basis. The cabinet may approve]~~ [such] [training courses,] based on the [cabinet's] determination that it provides~~[the course would provide]~~ equivalent training as the course ~~established~~[specified] in subsection (3) of this section. A prospective course sponsor shall submit~~, as a minimum,~~ [the following information]:

(a) Information about the course sponsor;

(b) Course location and fees;

(c) Copies or description of course handouts;

(d) A detailed description of course content and the amount of time allotted to each major topic;

(e) A description of teaching methods ~~[to be utilized]~~ and a list of all audio-visual materials;

(f) A list of all personnel to be involved in course preparation and presentation and a brief description of the background, special training, and qualifications of each;

(g) A description of student evaluation methods~~[to be used]~~;

(h) A description of course evaluation methods~~[to be used]~~;

(i) Any restriction on attendance ~~including language barriers~~[(language, etc.)]; and

(j) A copy of the written examination ~~to~~[which will] be administered at completion of the course.

Section 12. Records. (1) Each asbestos abatement entity shall maintain records of all asbestos abatement projects ~~[which it performs]~~ and shall make these records available to the cabinet upon request. The asbestos abatement entity shall retain the records for at least six (6) years.

(2) The asbestos abatement entity shall record the following information for each project:

(a) Name and address of supervisor responsible ~~for the project~~;

(b) The location and description of the project and the estimated amount of asbestos removed;

(c) Starting and completion date. If the completion date differs from that originally scheduled, include reasons for delay;

(d) Summary of the procedures used to comply with all applicable requirements, including copies of all notifications, if applicable;

(e) Name and address of the waste disposal site and disposal receipts, including the amount of asbestos-containing material disposed; and

(f) Results of all air sampling conducted during the asbestos abatement project, if applicable, including personal, area, and clearance samples.

Section 13. Penalties. ~~An~~[Any] asbestos abatement entity ~~that~~[which] violates any provision of this administrative regulation shall ~~comply with any penalty issued pursuant~~[be subject] to ~~[the appropriate enforcement action as provided under]~~ [KRS 224.99-010].

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Section 14. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Appendix M (Detailed Specifications for Sampling and Analyzing Airborne Asbestos) to "Guidance for Controlling Asbestos-Containing Materials in Buildings", (U.S. Environmental Protection Agency, Office of Pesticides and Toxic Substances, EPA 560/5-85-024, June 1985); and

(b) ~~DEP 7034, "Application for Asbestos [Contractor Certification/ Application]", DEP 7034, (February 2023).~~

(2)(a) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division for Air Quality, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(b) Copies of Appendix M to "Guidance for Controlling Asbestos-Containing Materials in Buildings" are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

CONTACT PERSON: Chris Ewing, Environmental Scientist, Division for Air Quality, 300 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 782-6604, fax (502) 564-4245, email Christian.Ewing@ky.gov.

JUSTICE AND PUBLIC SAFETY CABINET Department of Juvenile Justice (As Amended at ARRS, June 13, 2023)

505 KAR 1:120. Department of Juvenile Justice Policies and Procedures Manual: Health and Safety Services.

RELATES TO: KRS 15A.065, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.067, 15A.160, 200.115, 605.150, 635.095, 635.100(7), 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095 and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference policies and procedures concerning health and safety for~~into regulatory form materials used by~~ the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

Section 1. Incorporation by Reference.

(1) The "Department of Juvenile Justice Policy and Procedures Manual: Health and Safety Services", ~~June 13/May 12/January 13, 2023~~~~July 13, 2020~~, is incorporated by reference and includes the following:

400	Health Services Definitions (Amended 06/13/23 01/13/23 07/13/20)
400.1	Health Services (Amended 04/15/20)
401	Health Services Administration and Personnel (Amended 03/30/18)
402	Access to Treatment and Continuity of Care (Amended 04/15/20)
402.1	Continuity of Care and Medical Discharge (Amended 04/15/20)
403	Medical Records (Amended 04/15/20)
404.1	Admission Screening for Physical and Behavioral Health Challenges (Amended 07/13/20)
404.2	Ectoparasite Control (Amended 03/30/18)
404.3	Health Assessment and Physical Examination (Amended 03/30/18)
404.4	Sick Call (Amended 03/30/18)
404.5	Access to Diagnostic Services (Amended 03/30/18)
404.6	Emergency Medical Services (Amended 03/30/18)
404.7	First Aid, AED, and First Aid Kits (Amended 03/30/18)
404.8	Hospital Care (Amended 03/30/18)

404.10	Special Needs Treatment Plans (Amended 03/30/18)
404.11	Perinatal Care (Amended 03/30/18)
404.12	Oral Screening and Oral Care (Amended 03/30/18)
404.13	Preventative Health Care (Amended 03/30/18)
404.14	Family Planning Services (Amended 03/30/18)
405	Behavioral Health Services Administration and Personnel (Amended 07/13/20)
405.1	Behavioral Health Screening and Evaluation (Amended 06/13/23 04/15/20)
405.2	Forced Psychotropic Medications (Amended 07/10/18)
405.3	Referral for Behavioral Health Services (Amended 07/13/20)
405.4	Suicide Prevention and Intervention (Amended 06/13/23 05/12/23 07/13/20)
405.5	Behavioral Health Emergencies (Amended 04/15/20)
405.6	Psychiatric Hospitalization (Amended 07/13/20)
[406]	[Therapeutic Restraints (Amended 01/13/23)03/30/18]]]
407	Pharmaceuticals (Amended 03/30/18)
408.1	Forensic Information (Amended 03/30/18)
409	Substance Abuse and Chemical Dependency (Amended 03/30/18)
410	Orthoses, Prostheses, and Other Aids to Reduce the Effects of Impairment (Amended 08/14/18)
411	Notification in Emergencies (Amended 03/30/18)
414	Environmental Health and Safety (Amended 03/30/18)
415	Occupational Exposure to Bloodborne Pathogens (Amended 03/30/18)
416	HIV/AIDS/STI (Amended 03/30/18)
416.1	Infectious Communicable Disease (Amended 03/30/18)
424	Emergency Plans (Amended 03/30/18)
424.1	Emergency Plans for Central Office (Amended 03/30/18)
426	Dietary Services (Amended 03/30/18)
427	Maintenance (Amended 03/30/18)
427.1	Control and Use of Tools and Sharps (Amended 03/30/18)
428	Control and Accountability of Flammable, Toxic, Caustic and Other Hazardous Materials (Amended 03/30/18)
428.1	Control of Hazardous Materials in Central Office (Amended 03/30/18)
430	Pets and Domestic Animals (Amended 03/30/18)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Juvenile Justice Web site at <https://djj.ky.gov/About%20DJJ/Pages/lrcfilings.aspx>.

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.

JUSTICE AND PUBLIC SAFETY CABINET Department of Juvenile Justice (As Amended at ARRS, June 13, 2023)

505 KAR 1:140. Department of Juvenile Justice Policies and Procedures Manual: detention services.

RELATES TO: KRS 15A.065, 15A.067, 15A.200-~~15A~~.245, 15A.305, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305, 200.115, 605.150, 635.095, 635.100(7), 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095 and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate

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administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference policies and procedures concerning detention services for~~[into regulatory form materials used by]~~ the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

Section 1. Incorporation by Reference.

(1) The "Department of Juvenile Justice Policy and Procedures Manual: Detention Services", ~~June 13/May 12/January 13,~~ 2023~~[July 10, 2018]~~, is incorporated by reference and includes the following:

700	Definitions (Amended 06/13/23 <u>01/13/23</u> [03/30/18])
700.1	Detention Services Delivery System (Amended 06/13/23 <u>01/13/23</u> [Added 03/30/18])
701	Criteria for Admissions (Amended 03/30/18)
702	Intake, Reception and Orientation (Amended 07/10/18)
703	Detention Risk Assessment (Amended 03/30/18)
704	Alternatives to Secure Detention (Amended 01/13/23 <u>07/10/18</u>)
704.1	Supervision of Juveniles in Alternative to Secure Detention Programs (Amended 03/30/18)
704.2	Revocation of Juveniles in Alternative to Secure Detention Programs (Amended 03/30/18)
704.3	Juvenile Justice and Delinquency Prevention Act (Added 03/30/18)
705	Individual Client Records (Amended 03/30/18)
705.2	Progress Notes (Amended 03/30/18)
706	Grievance Procedure (Amended 03/30/18)
707	Bed Capacities and Staffing of Juvenile Detention Centers (Amended 01/13/23 <u>03/30/18</u>)
708	Classification of Juveniles for Housing and Program Assignment (Amended 01/13/23 <u>03/30/18</u>)
709	Security and Control (Amended 03/30/18)
710	Shift and Log Reports (Amended 03/30/18)
[711]	[Transportation of Juveniles (Amended 01/13/23)] <u>[03/30/18]</u>
712	Escape/AWOL (Amended 06/13/23 <u>01/13/23</u> [03/30/18])
[713]	[Restraints (Amended 05/12/23)] <u>[01/13/23]</u> [07/10/18]
714	Searches (Amended 03/30/18)
715	Incident Reports (Amended 03/30/18)
716	Behavior Management (Amended 03/30/18)
717	Discipline and Special Behavior Management (Amended 06/13/23 <u>01/13/23</u> [03/30/18])
718	Disciplinary Review (Amended 07/10/18)
720	Programs and Services (Amended 03/30/18)
720.1	Library Services (Amended 01/13/23 <u>03/30/18</u>)
720.2	Recreation and Structured Activities (Amended 01/13/23 <u>03/30/18</u>)
720.3	Religious Programs (Amended 03/30/18)
720.4	Juveniles Work Details (Amended 03/30/18)
720.5	Social Services (Amended 07/10/18)
720.6	Family and Community Contact (Amended 07/10/18)
725	Educational Programming and Assessment (Amended 07/10/18)
725.1	Instructional Staffing (Amended 03/30/18)
725.2	Education Records (Amended 07/10/18)
726	Leaves (Amended 03/30/18)
729	Release From Detention (Amended 03/30/18)
730	Inspections of Secure Juvenile Detention Facilities (Amended 01/13/23 <u>03/30/18</u>)
731	Complaint Investigations of Secure Juvenile Detention Centers and Juvenile Holding Facilities (Amended 03/30/18)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Juvenile Justice Web site at

<https://djj.ky.gov/About%20DJJ/Pages/Ircfilings.aspx>.

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.

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM

Kentucky Fire Commission
(As Amended at ARRS, June 13, 2023)

739 KAR 2:060. Certification and qualifications of fire and emergency services instructors.

RELATES TO: KRS 75.400(2), (4), (5), 95.010(1)(c), 95A.040(1)(c), (3)(b), 95A.210(1), (6)

STATUTORY AUTHORITY: KRS ~~95A.040~~95A.050(3)(b), 95A.050(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 95A.040(3)(b) authorizes the Kentucky Fire Commission ~~[on Fire Protection Personnel Standards and Education]~~ to certify fire protection instructors. KRS 95A.050(3) authorizes the Kentucky Fire Commission to promulgate reasonable administrative regulations relating to fire protection personnel. This administrative regulation sets forth the criteria for instructor certification, including the training and educational requirements of applicants for certification.

Section 1. Definitions. (1) "Commission" means the Kentucky Fire Commission as defined by KRS 95A.210(1).

(2) "Fire and Emergency Services instructor" means an individual trained and certified pursuant to KRS 95A.040(1)(c), this administrative regulation, and the National Fire Protection Association, as a person qualified to instruct fire protection personnel or supervise the training of fire protection personnel. This term is synonymous with the term "fire and emergency services instructor" as referenced in the National Fire Protection Association 1041 standard.

(3) "Fire department" means a fire department, fire protection district, or fire taxing district recognized by the commission as defined in KRS 75.400(2), (4) and (5) and 95.010(1)(c).

(4) "Firefighter I" means an individual who has demonstrated the knowledge and skills to function as an integral member of a firefighting team under direct supervision in hazardous conditions and is certified by the commission as accredited by the International Fire Service Accreditation Congress within the Commonwealth of Kentucky.

(5) "Firefighter II" means an individual who has demonstrated the skills and depth of knowledge to function under general supervision and is certified by the commission as accredited by the International Fire Service Accreditation Congress within the Commonwealth of Kentucky.

(6) "IFSA" means the International Fire Service Accreditation Congress.

(7) "KCTCS" means the Kentucky Community and Technical College System.

(8) "MOI" means an educational methodology course meeting the job performance requirements within NFPA 1041 and conducted by:

- (a) The Kentucky Fire Commission State Fire Rescue Training;
- (b) KCTCS;
- (c) A regionally accredited college or university; or
- (d) An agency approved by the commission to train within its jurisdiction.

(9) "Professional firefighter" is defined by KRS 95A.210(6).

(10) "Reciprocity" means the recognition of an accredited certification from another state, territory, province, or nation following verification that the certification is current, valid, and without restriction.

(11) "Volunteer Firefighter" means an individual who meets the requirements of 739 KAR 2:100.

Section 2. Levels of Certification and Scope. (1) The commission shall certify fire and emergency services instructors at the following levels:

- (a) Fire and Emergency Services Instructor Level I;
- (b) Fire and Emergency Services Instructor Level II;
- (c) Live Fire Instructor; ~~and~~
- (d) Live Fire Instructor-In-Charge; ~~and~~;
- (e) Live Fire Instructor-In-Charge (Non-Acquired Structure).

(2) A fire and emergency services instructor shall only teach a fire service related curricula upon meeting all requirements for certification mandated by this administrative regulation. An instructor shall only teach curricula within the scope of the instructor's respective fire and emergency services instructor level, subject to the conditions established in this section.

(3) An instructor certified as a Level I fire and emergency services instructor may conduct firefighter training at any fire department or agency located in the Commonwealth pursuant to paragraphs (a) and (b) of this subsection.

(a) Training shall only be conducted at the request of a fire department or agency.

(b) Upon invitation, a person certified as a Level I fire and emergency services instructor shall conduct training using curricula approved by the commission.

(4) A person certified as a Level II fire and emergency services instructor may conduct firefighter training at any fire department or agency located in the Commonwealth pursuant to paragraphs (a) through (c) of this subsection.

(a) Training shall only be conducted at the request of a fire department or agency.

(b) Upon invitation, a person certified as a Level II fire and emergency services instructor may conduct training using curricula approved by the commission or curricula developed by a Level II fire and emergency services instructor.

(c) At a fire department of which the Level II fire and emergency services instructor is a member, the Level II fire and emergency services instructor may allow a Level I fire and emergency services instructor to conduct training under the Level II fire and emergency services instructor's direction, using lesson plans developed by the Level II fire and emergency services instructor.

(5) The commission shall not certify new Level III fire and emergency services instructors after January 1, 2022. An instructor certified as a Level III fire and emergency services instructor on or before January 1, 2022, shall be eligible for certification renewal pursuant to Section 5 of this administrative regulation and shall retain his or her Level III fire and emergency services instructor certification until:

(a) The certification expires pursuant to Section 5 of this administrative regulation;

(b) The certification is revoked pursuant to Section 6 of this administrative regulation; or

(c) The instructor is no longer an active member of a Kentucky fire department.

(6) A Level III fire and emergency services instructor shall meet the intent of NFPA 1041 and have the ability to develop fire service related curricula.

Section 3. Instructor Certification Requirements. (1) An instructor shall not teach without first meeting all requirements for certification established in this administrative regulation.

(2) An applicant for initial certification as a Level I fire and emergency services instructor shall complete and submit:

(a) A Kentucky Fire and Emergency Services Instructor Level I webform;

(b) Verification of active member status of a Kentucky fire department, degree program at an institution of higher education within the Commonwealth, or a recognized federal fire department within the Commonwealth;

(c) Verification of at least one (1) year of experience as a certified professional or volunteer firefighter in the Commonwealth of Kentucky, or in another state, preceding the application date for Level I fire and emergency services instructor certification;

(d) Verification of IFSAC accredited Kentucky, or IFSAC accredited Kentucky reciprocity, Firefighter I and II certificates on which the applicant's seal numbers shall be denoted and provides proof of completion of both written and skill performance tests;

(e) A copy of the applicant's high school diploma or transcript, general equivalency diploma (GED), college degree, or transcript from a regionally accredited institution of higher learning; and

(f) 1. Verification of MOI, IFSAC accredited Kentucky, or IFSAC accredited Kentucky reciprocity, Fire Instructor I certification on which the applicant's seal numbers shall be denoted and provides proof of completion of both written and skill performance tests;

2. Verification of MOI, a Bachelor's degree in education issued by a regionally accredited institution of higher education; or

3. Verification of MOI, individual who holds a position as an instructor or instructional faculty member of a regionally accredited institution of higher education in the subject of fire service or a related field.

(3) An applicant for initial certification as a Level II fire and emergency services instructor shall complete and submit:

(a) A Kentucky Fire and Emergency Services Instructor Level II webform;

(b) Verification of active member status of a Kentucky fire department, degree program at a regionally accredited institution of higher education, or a recognized federal fire department within the Commonwealth; and

(c) Verification of IFSAC accredited Kentucky or IFSAC accredited reciprocity certification as a Level I Fire and Emergency Services Instructor for at least one (1) year.

(4) An applicant for certification as a Live Fire Instructor shall complete and submit:

(a) A Kentucky Live Fire Instructor webform;

(b) Verification of active member status of a Kentucky fire department, degree program at an institution of higher education within the Commonwealth, or a recognized federal fire department within the Commonwealth;

(c) If certified as a Level I Fire and Emergency Services Instructor on or after September 6, 2003, verification of IFSAC accredited Kentucky or IFSAC accredited reciprocity certification as a Fire and Emergency Services Level I instructor for at least two (2) years; and

(d) Proof of successful completion of the commission approved NFPA 1403 class and written examination.

(5) An applicant for certification as a Live Fire Instructor-In-Charge shall complete and submit:

(a) A Kentucky Live Fire Instructor-In-Charge webform;

(b) Verification of active member status of a Kentucky fire department, degree program at an institution of higher education within the Commonwealth, or recognized federal fire department within the Commonwealth;

(c) If certified as a Level II Fire and Emergency Services Instructor on or after June 28, 2011, verification of IFSAC accredited Kentucky or IFSAC accredited reciprocity certification as a Fire and Emergency Services Level II instructor for at least two (2) years; ~~and~~

(d) Proof of successful completion of the commission approved NFPA 1403 class and written examination; ~~and~~;

(e) Proof of successful completion of the Kentucky Fire Commission Live Fire Instructor-In-Charge course to include all associated skills.

(6) An applicant for certification as a Live Fire Instructor-In-Charge (Non-Acquired Structure) shall complete and submit:

(a) A Kentucky Live Fire Instructor-In-Charge webform;

(b) Verification of active member status of a Kentucky fire department, degree program at an institution of higher education within the Commonwealth, or recognized federal fire department within the Commonwealth;

(c) If certified as a Level II Fire and Emergency Services Instructor on or after June 28, 2011, verification of IFSAC accredited Kentucky or IFSAC accredited reciprocity certification as a Fire and Emergency Services Level II instructor for at least two (2) years;

(d) Proof of successful completion of the commission approved NFPA 1403 class and written examination; and

(e) Proof of successful completion of the Kentucky Fire Commission Live Fire Instructor-In-Charge course to include all associated skills except the acquired structure skills.

Section 4. Reciprocity. (1) Individuals seeking certification as a Level I or Level II fire and emergency services instructor through reciprocity from any state, territory, or country shall be granted approval by the commission if the applicant meets all certification requirements for Level I or Level II fire and emergency services instructor certification pursuant to Section 3 of this administrative regulation.

(2) The applicant shall complete and provide proof of completion of at least eight (8) hours of continuing education in methodology taught by Kentucky State Fire Rescue Training.

Section 5. Instructor Certification Terms and Renewal. (1) Unless renewed, certification for Levels I, II, and III fire and emergency services instructors shall expire after four (4) years from the date of certification and approval, and every four (4) years thereafter.

(2) The commission shall grant certification renewal for Level I, II, and III fire and emergency services instructors who submit:

(a) Documentation of at least twenty (20) hours of training per year during the renewal cycle; and

(b) Verification of attendance of at least eight (8) hours of methodology training during the renewal cycle.

Section 6. Suspension or Revocation of Certification and Appeal.

(1) The commission's Eligibility Committee shall revoke or suspend an instructor's certification if, after reasonable notice and a hearing, it is determined that the instructor committed misconduct with regard to fire and emergency services instructor certification or job duties. Misconduct shall include ~~conduct such as the following~~:

(a) A material misstatement or misrepresentation in any document furnished to the commission to obtain the issuance or renewal of certification;

(b) Falsification of training records; or

(c) An act of negligence or malfeasance.

(2) An instructor whose certification is subject to suspension or revocation shall be entitled to thirty (30) days' notice and a hearing before the commission's Eligibility Committee.

(3) If the commission's Eligibility Committee hearing results in a decision to revoke or suspend an instructor's certification, the instructor shall be notified in writing of the action and the right to appeal before the commission no later than ten (10) days following the hearing.

(4) An instructor shall request an appeal in writing within fifteen (15) days of receipt of the notification of the commission's intent to revoke or suspend the instructor's certification.

(5) If the individual appeals the commission's intent to revoke or suspend his or her instructor certification, a hearing shall be conducted at the next regular meeting of the commission, or within thirty (30) days of the appeal request, whichever is first.

(6) If the commission's hearing results in a decision to revoke or suspend an instructor's certification, the instructor shall be notified in writing of the action and the right to appeal pursuant to KRS Chapter 13B no later than ten (10) days following the hearing of the appeal.

(7) The certification of an instructor who fails to maintain active status with a commission-recognized Kentucky fire department, degree program, federal fire department, or Kentucky State Fire Rescue Training shall be automatically suspended until active status with a commission-recognized Kentucky fire department, degree program, federal fire department, or Kentucky State Fire Rescue Training is reinstated and all requirements for recertification are met.

Section 7. Reinstatement of Certification. (1) The commission shall reinstate the certification of an instructor whose certification has lapsed for a period not exceeding one (1) year, unless the applicant has been subjected to discipline that would prevent

reinstatement, upon submission of:

(a) A completed Kentucky Fire and Emergency Services Instructor Reinstatement webform;

(b) Proof of completion of at least eight (8) hours of methodology training provided by State Fire Rescue Training; and

(c) Verification of attendance of at least twenty (20) hours of recognized fire service training following the date of reactivation by a commission recognized Kentucky fire department of which the applicant is a member.

(2) The commission shall not reinstate the certification of an instructor whose certification has lapsed for a period exceeding one (1) year.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Fire and Emergency Services Instructor Level I webform", 2021;

(b) "Kentucky Fire and Emergency Services Instructor Level II webform", 2021;

(c) "Kentucky Live Fire Instructor webform", 2021;

(d) "Kentucky Live Fire Instructor-In-Charge webform", 2021; and

(e) "Kentucky Fire and Emergency Services Instructor Reinstatement webform", 2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Fire Commission office, 110 Cleveland Drive, Paris, Kentucky 40361, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained at: <http://kyfires.acadisonline.com/>.

CONTACT PERSON: Jonathan L. Gay, Counsel for the Kentucky Fire Commission, 163 E. Main Street, Suite 200, Lexington, Kentucky 40507, phone (859) 225-4714, fax (859) 225-1493, email administrativeregulations@wgmfirm.com.

**PUBLIC PROTECTION CABINET
Department of Insurance
Division of Health, Life, Managed Care
(As Amended at ARRS, April 11, 2023)**

806 KAR 6:072. Valuation of life insurance and annuity reserves.

RELATES TO: KRS 304.1-050, 304.2-290, 304.3-240, 304.6, 304.15-410

STATUTORY AUTHORITY: KRS 304.2-110, 304.6-140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the commissioner to promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as established[defined] in KRS 304.1-010. KRS 304.6-140 authorizes the commissioner to promulgate administrative regulations approving any mortality table "adopted by the National Association of Insurance Commissioners after 1980" for use in determining the minimum standard for valuation of policies. This administrative regulation establishes the framework for valuation standards acceptable to the department and establishes the conditions under which the department actuary will verify the valuation of a company's reserves without cost to the insurer.

Section 1. Definitions. (1) "1983 GAM Table" means that mortality table developed by the Society of Actuaries Committee on Annuities and adopted as a recognized mortality table for annuities in December, 1983 by the National Association of Insurance Commissioners.

(2) "1983 Table 'a'" means that mortality table developed by the Society of Actuaries Committee to Recommend a New Mortality Basis for Individual Annuity Valuation and adopted as a recognized mortality table for annuities in June, 1982 by the National Association of Insurance Commissioners.

(3) "1994 GAR Table" means that mortality table developed by

the Society of Actuaries Group Annuity Valuation Table Task Force, containing the projection scale AA, using the methodology established in Section 4(3)(i) of this administrative regulation.

(4) "2012 Individual Annuity Mortality Period (2012 IAM Period) Table" means the period table, developed by the Society of Actuaries Committee on Life Insurance Research, containing loaded mortality rates for calendar year 2012 and containing rates, qx2012.

(5) "2012 Individual Annuity Reserve Table (2012 IAR Table)" means the generational mortality table developed by the Society of Actuaries Committee on Life Insurance Research and containing rates, qx2012-n, derived from a combination of the 2012 Individual Annuity Mortality Period (2012 IAM Period) Table and Projection Scale G2 (Scale G2), using the methodology established in Section 4(3)(i) of this administrative regulation.

(6) "Actuarial guidelines" mean a series of interpretive guidelines approved by the National Association of Insurance Commissioners for inclusion in its Handbook for Financial Examiners.

(7) "Annual statement" means the annual statement required by KRS 304.3-240.

(8) "Annuity 2000 Mortality Table" means that mortality table developed by the Society of Actuaries Committee on Life Insurance Research. The Annuity 2000 Mortality Table is included in the report on pages 211-249 of Volume XLVII of the Transactions of the Society of Actuaries (1995).

(9) "Commissioner" is defined by KRS 304.1-050(1).

(10) "Department" is defined by KRS 304.1-050(2).

(11) "Department actuary" means the actuary employed by or contracted with the department for the purpose of making or verifying a valuation.

(12) "Generational mortality table" means a mortality table containing a set of mortality rates that decrease for a given age from one (1) year to the next based on a combination of a period table and a projection scale containing rates of mortality improvement.

(13) "Life insurances policies, annuities, and pure endowment contracts":

(a) Means any contracts, together with all riders or endorsements and all additional benefits related thereto, whether these additional benefits are provided by policy provision or supplementary contract; and

(b) Does not mean a provision through which the insurer accepts deposits to provide future insurance, annuity, or pure endowment benefits.

(14) "Period table" means a table of mortality rates applicable to a given calendar year.

(15) "Projection Scale AA (Scale AA)" means a table developed by the Society of Actuaries Group Annuity Valuation Table Task Force of annual rates, AAx, of mortality improvement by age for projecting future mortality rates beyond calendar year 1994.

(16) "Projection Scale G2 (Scale G2)" means a table developed by the Society of Actuaries Committee on Life Insurance Research, of annual rates, G2x, of mortality improvement by age for projecting future mortality rates beyond calendar year 2012.

(17) "Qualified actuary" means a member in good standing of the American Academy of Actuaries who meets the requirements of Section 6 of this administrative regulation.

(18) "Reserve comparison" means a calculation:

(a) Setting out three (3) year tabulations of extracts from a company's valuation; and

(b) ~~[Which is]~~ Completed by plan, with subtotals by mortality table, interest assumption, and valuation method that[which] correspond to the line entries in Exhibit 5 of the current annual statement.

Section 2. Filing Requirements for Domestic Insurers. (1) To facilitate the commissioner's evaluation of the valuation of reserves for life insurance policies, annuities, and pure endowment contracts made by a domestic insurer's actuary or consulting

actuary, each insurer shall provide[furnish] the department actuary an affidavit, signed by the qualified actuary responsible for the valuation and setting out insurance amounts and reserves on all contracts by basis of valuation and a reserve comparison.

(2) Each domestic insurer shall maintain in numerical[corresponding] order~~;~~ with the necessary documentation, lists, tabulations, and working papers for policy contract obligations to be valued, which shall be in readily accessible and auditable form at the domestic insurer's[its] home office.

Section 3. Valuation Principles. (1) Extraterritoriality. The commissioner shall question and may ~~[question or]~~ reject any valuation made by the insurance supervisory official of another state that[which] does not comply with the minimum standards as established[provided] in KRS Chapter 304.6.

(2) Nature of liabilities.

(a) The liabilities covered by reserves for life insurance policies, annuities, and pure endowment contracts shall be generated by recognition of obligations to provide future sums of money, which are guaranteed in these contracts, and the standards of valuation established[set-out] in KRS 304.6-140 through 304.6-180, shall be established[are set-out] in prospective terms.

(b)1. If ~~the[these]~~ methods established in paragraph (a) of this subsection are not possible to apply directly, retrospective methods, using accumulations at appropriate rates of interest may be used.

2. [shall be acceptable; however,] A company using these methods shall be prepared to demonstrate that these methods result in sufficient amounts to fund any obligations established[set out] in its contracts as guarantees of future performance.

3. Obligations that[which] arise from known past events shall be valued retrospectively.

Section 4. Specific Requirements. (1) Interest assumptions. The Moody's Corporate Bond Yield Averages referenced in KRS 304.6-145(4) shall be[are those] for the period ending June 30[July 1] for each calendar year.

(2) The actuarial guidelines shall be used, except if statutorily prohibited[as published unless specifically prohibited by statute].

(3) Mortality tables.

(a) Except as established[provided] in paragraph (b) of this subsection, the 1983 Table "a" shall be recognized and approved as an individual annuity mortality table for valuation and, at the option of the company, may be used for purposes of determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after July 1, 1976.

(b) Except as established[provided] in paragraph (c) of this subsection, either the 1983 Table "a" or the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 1985.

(c) Except as established[provided] in paragraph (d) of this subsection, the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 2005.

(d) Except as established[provided] in paragraph (e) of this subsection, the 2012 Individual Annuity Reserve Table (2012 IAR Table) shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 2015.

(e) The 1983 Table "a" without projection shall be used for determining the minimum standards of valuation for an individual annuity or pure endowment contract issued on or after January 1, 2005, solely if[when] the contract is based on life contingencies and is issued to fund periodic benefits arising from:

1. Settlements of various forms of claims pertaining to court settlements or out of court settlements from tort actions;

2. Settlements, such as life settlements agreed to outside of court and that do not constitute disability

~~settlements~~~~[involving similar actions]~~; or

3. Settlements of long-term disability claims ~~in which~~~~[where]~~ a temporary or life annuity has been used in lieu of continuing disability payments.

(f) Except as ~~established~~~~[provided]~~ in paragraph (g) of this subsection, the 1983 GAM Table and the 1983 Table "a" shall be recognized and approved as group annuity mortality tables for valuation and, at the option of the company, any one of these tables may be used for purposes of valuation for any annuity or pure endowment purchased on or after July 1, 1976, under a group annuity or pure endowment contract.

(g) Except as ~~established~~~~[provided]~~ in paragraph (h) of this subsection, the 1983 GAM Table shall be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after January 1, 1985, under a group annuity or pure endowment contract.

1. The commissioner shall give consideration to the approval of other tables of mortality ~~that~~~~[which]~~ produce lower reserves in any special case, if the request for approval is accompanied by an actuarial report, signed by the qualified actuary, of the reasons for the request.

2. If applicable, the report shall include an estimate of the degree of protection against insolvency provided as margin in the proposed table.

(h) The 1994 GAR Table shall be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after January 1, 2015 under a group annuity or pure endowment contract. The commissioner shall give consideration to the approval of other tables of mortality which produce lower reserves in any special case, if the request for approval is accompanied by an actuarial report, signed by the qualified actuary, of the reasons for the request. If applicable, the report shall include an estimate of the degree of protection against insolvency provided as margin in the proposed table.

(i) 1. In using the 2012 Individual Annuity Reserve Table (2012 IAR Table), the mortality rate for a person age x in year $(2012 + n)$ shall be calculated as follows:

$$q_{x, 2012+n} = q_{x, 2012} (1 - G2) ^ n$$

2. The resulting $q_{x, 2012+n}$ shall be rounded to three (3) decimal places per 1,000.

3. The rounding shall occur according to the formula in subparagraph 1. of this paragraph, starting at the 2012 period table rate.

4. An Example: Rounding Calculations for Mortality Table Construction for 2012 IAR Table page for use of this mortality table is incorporated by reference in this administrative regulation.

(j) In using the 1994 GAR Table, the mortality rate for a person age x in year $(1994 + n)$ shall be calculated as follows where the $q_{x, 1994}$ and AA_x are as ~~established~~~~[specified]~~ in the 1994 GAR Table:

$$q_{x, 1994+n} = q_{x, 1994} (1 - AA) ^ n$$

(4) Changes of method (domestic insurers). The effects of changes in the methods of valuing life contracts shall be reported in Exhibit 5A of the annual statement in the year in which the change first takes place. Exhibit 5A shall show the old and the new method of valuation and the increase or decrease in the actuarial reserve due to the change. If adopting a method that produces an increase in the reserve, the company shall notify the department. ~~[However,]~~ If a change will produce a reserve that will be less than the amount under the old method, the company shall have the prior approval, pursuant to subsection 3(g) of this section, of the commissioner.

Section 5. Cost of Noncompliance. (1) If the material is not available as established in Sections 2 and 4 of this administrative regulation~~[outlined above]~~, the additional burden of cost for additional time required by the staff of the Department of Insurance, or its department actuary, shall be borne by the life insurance company as established~~[provided for]~~ in KRS 304.2-

290. A special examination may be ordered by the commissioner, providing for a written report to him or her together with a time and expense billing to the company so examined.

(2) If a ~~detailed~~~~[detail]~~ audit of reserves reveals that an error was made in the filed annual statement and in the certificate issued by the department, the commissioner may order the withdrawal of certification and reissuance of certificates and copies, and require a refiled annual statement on a significant error, or request the company to file a corrective action plan prior to the next filed annual statement ~~if~~~~[when]~~ the resultant error is not significant.

Section 6. Qualified Actuary Requirements. (1) In addition to Section 1(17) of this administrative regulation, in order to be considered a qualified actuary, a person shall be familiar with the valuation requirements applicable to life and health insurance companies.

(2)(a) The actuary shall not meet the requirements of a qualified actuary if that person has:

1. Violated any provision of, or any obligation imposed by, any law in the course of his or her dealings as qualified actuary;
2. Been found guilty of fraudulent or dishonest practices;
3. Demonstrated incompetence, lack of cooperation, or untrustworthiness to act as a qualified actuary;

4. Submitted an actuarial opinion or memorandum that was rejected because it did not comply with the Kentucky Insurance Code, KRS Chapter 304, or standards established by the Actuarial Standards Board during the past five (5) years; or

5. Resigned or been removed as an actuary within the past five (5) years as a result of an act or omission indicated in any adverse report on examination or as a result of the failure to adhere to generally acceptable actuarial standards; and

(b) Failed to notify the commissioner of any adverse action taken against the actuary pursuant to paragraph (a)1. through 5. of this subsection by any insurance regulatory official of any other state.

Section 7. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "1983 Table 'a'", 1/2023;
- (b) "1983 GAM Table", 1/2023;
- (c) "1994 GAR Table", 1/2023;
- (d) "2012 Individual Annuity Mortality Period (2012 IAM Period) Table", 1/2023;
- (e) "2012 Individual Annuity Reserve Table (2012 IAR Table)", 1/2023;
- (f) "Annuity 2000 Mortality Table", 1/2023;
- (g) "Projection Scale AA (Scale AA)", 1/2023;
- (h) "Projection Scale G2 (Scale G2)", 1/2023; and
- (i) "Example: Rounding Calculations for Mortality Table Construction for 2012 IAR Table", 1/2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, The Mayo Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m. This material is also available on the Web site at: <http://insurance.ky.gov/ppc/CHAPTER.aspx>.

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**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, June 13, 2023)**

810 KAR 7:040. Kentucky Standardbred Development Fund and Kentucky Standardbred Breeders' Incentive Fund.

RELATES TO: KRS 230.215, 230.260, 230.770, 230.802
STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8), 230.770(1), (6), (7), 230.802(2)(b)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the Kentucky Horse Racing

Commission to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky and to fix and regulate the minimum amount of purses, stakes, or awards to be offered for the conduct of any horse race meeting. KRS 230.770(1) establishes the Kentucky standardbred development fund. KRS 230.770(6) and (7) authorize the commission to promulgate administrative regulations establishing the eligibility of horses participating in races for which a portion of the purse is provided by the Kentucky Standardbred Development Fund and the conditions, class, and quality of the races. KRS 230.802(1) establishes the Kentucky standardbred breeders' incentive fund. KRS 230.802(2)(b) requires the commission to promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the fund. This administrative regulation establishes eligibility standards, administrative practices to enforce the standards, criteria for the distribution of moneys from these funds, mandatory criteria for races, and the administration of purses and payments in these races.

Section 1. Definitions.

(1) "Commission" means the Kentucky Horse Racing Commission.

(2) "Consolation" means the race following a series of preliminary legs for the next preferred horses, as established in Section 6 of this administrative regulation, which did not qualify for the finals of each racing division of the Kentucky Sire Stakes program.

(3) "Final" means the race following a series of preliminary legs established to determine the divisional champion of each racing division of the Sire Stakes Program.

(4) "Kentucky-bred" means a standardbred horse that is:

(a) Foaled out of a standardbred mare that is registered with the commission and meets the requirements of this administrative regulation~~[is a resident of Kentucky]~~; or

(b) Sired by a standardbred stallion residing in Kentucky that meets the requirements of this administrative regulation.

(5) "Kentucky Sire Stakes" means the series of races held annually in Kentucky for two (2) and three (3) year old Kentucky-bred fillies and colts, both trotting and pacing, and funded in whole or in part by the Kentucky Standardbred Development Fund or the Kentucky Standardbred Breeders' Incentive Fund.

(6) "KSBI" means the Kentucky Standardbred Breeders' Incentive Fund as established in KRS 230.802.

(7) "KSDF" means the Kentucky Standardbred Development Fund as established in KRS 230.770.

(8) "Stallion residing in Kentucky" means a stallion physically located and standing in Kentucky for 180 days of the calendar year in which the stallion is registered that does not service mares in any other state, jurisdiction, or country outside Kentucky during the calendar year in which the stallion is registered.

(9) "USTA" means the United States Trotting Association.

Section 2. Domicile Requirements.

(1)

(a) An owner, lessee, stallion manager, or syndicate manager of a standardbred stallion residing in Kentucky who desires to use the stallion to breed and to have his progeny eligible for the KSDF or KSBI shall register the stallion with the commission by December 31st of the year of conception of the horse sought to be eligible by submitting a completed "KSDF/KSBI Stallion Certificate of Eligibility Form", KHRC 7-040-2.

(b) Standardbred stallions not residing in Kentucky are not required to register with the commission. The progeny of a standardbred stallion not residing in Kentucky is not eligible for the KSDF or KSBI unless the progeny is that of a standardbred mare registered under and meeting the requirements of this administrative regulation.

(c) All standardbred stallions shall be registered with the USTA, Standardbred Canada, or other appropriate international harness racing governing agency whether residing in Kentucky or not.

(2)

(a) An owner, lessee, manager, or syndicate manager of a standardbred mare who desires to use the mare for breeding purposes and to have her progeny eligible for the KSDF or KSBI shall register the mare by December 31st of the year of conception of the horse sought to be eligible by submitting a completed "KSDF/KSBI Mare Certificate of Eligibility Form", KHRC 7-040-3.

(b) To be eligible for registration, the mare shall:

1. Be registered with the USTA, Standardbred Canada, or other appropriate international harness racing governing agency; and

2. Have resided in Kentucky for a period of not less than 180 days in the calendar year of conception of the horse sought to be eligible.

(c) If a horse is conceived by embryo and ovum transplant (ET), both the donor mare and recipient mare shall be registered during the year of conception, and the recipient mare shall reside in Kentucky for a period of not less than 180 days in the calendar year of conception of the horse sought to be eligible.

(3) Registrations shall be received by the commission by the close of business or postmarked on the deadline established in this section in order to be eligible.

(4) An owner, lessee, stallion manager, manager, or syndicate manager of a stallion or mare eligible for the KSDF and KSBI shall be responsible for:

(a) The registrations and records of the farm where the stallion stands or the mare resides; and

(b) Complying with all applicable requirements of this administrative regulation.

Section 3. Eligibility.

(1) In order to qualify for the Kentucky Sire Stakes, a foal shall be a two (2) or three (3) year old Kentucky-bred and maintain eligibility for the KSDF and KSBI.

(2)

(a) Except as provided by paragraph (b) of this subsection, only a foal that is the first born to a mare (donor or recipient) in each calendar year produced by any method, including embryo and ovum transplant (ET), shall be eligible for the Kentucky Sire Stakes.

(b) Natural birth twins produced from the same pregnancy and foaling by the natural, nonrecipient mare shall also be eligible.

(3) Any future offspring of foals ineligible for racing under this section shall be ineligible for the Kentucky Sire Stakes.

Section 4. Distance. Each Kentucky Sire Stakes race shall be a one (1) mile dash.

Section 5. Post Positions. Post positions for the final, consolation, and all preliminary legs of the Kentucky Sire Stakes race shall be an open draw with two (2) horses drawn for the final and consolation races that are designated as "also eligibles" under Section 6(7) of this administrative regulation.

Section 6. Eligibility for the Final and Consolation Races.

(1) Beginning with the 2018 Kentucky Sire Stakes races, consolation races may be eligible for funding.

(2) A horse that does not start in at least one (1) of the preliminary legs scheduled shall not be eligible for the final or consolation.

(a) All horses earning points may enter in the final with:

1. The top eight (8) point earners, if the horses raced on a half (1/2) mile track or five-eighths (5/8) mile track; or

2. Top ten (10) point earners, if the horses raced on a one (1) mile track, to be declared eligible.

(b) On a half (1/2) mile track or five-eighths (5/8) mile track, the top eight (8) point earners shall not be eligible for the consolation. On a one (1) mile track, the top ten (10) point earners shall not be eligible for the consolation.

(c) A horse that is eligible to race in the final shall only be eligible to race in the final, unless the horse is qualified as an also eligible.

(d) A horse that is eligible to race in the consolation shall only

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be eligible to race in the consolation, unless qualified in the final as an also eligible.

(e) A horse that scratches from the final shall not race in the consolation.

(f) A horse that has qualified for the final or consolation shall remain eligible for the final or consolation.

(g) At least seven (7) eligible horses shall be declared for a consolation race to be contested.

(h) A horse that is automatically eligible to race in the final race shall not start in the consolation race.

(3) A horse that enters a preliminary leg that does not fill and is not raced shall receive credit toward fulfilling the minimum starting requirements established in subsection (2) of this section and toward determining tiebreaker status as established in subsection (6)(b) of this section.

(4) A horse that has been scratched from an event that is raced shall not receive credit toward meeting the starting requirements established in subsection (2) of this section.

(5) A horse, in order to start in the final or consolation, shall be declared at the host track where the race is being held on or before the time posted on the track condition sheet.

(6)

(a) If the number of horses eligible and declared into any final or consolation event exceeds the maximum number specified by the KSDF or KSBIF or the number of positions on the starting gate, the following point system as applied to KSDF preliminary legs shall determine preference for the final:

1. 1st place - fifty (50) points;
2. 2nd place - twenty-five (25) points;
3. 3rd place - twelve (12) points;
4. 4th place - eight (8) points;
5. 5th place - five (5) points;
6. 6th place and all other starters - one (1) point; and
7. A horse finishing in a dead heat for any position in a preliminary leg shall be awarded an equal share of the total number of points awarded for that position.

(b) If there is a tie among horses after the awarding of points pursuant to paragraph (a) of this subsection, there shall be a drawing by lot among those horses tied in total points to determine which horses shall be included in the final field.

(c) If a horse that is qualified for the final or consolation is not declared, the horse with the next highest point total, pursuant to paragraph (a) of this subsection, that is declared shall be eligible for the final or consolation.

(7) Also eligibles.

(a) The two (2) horses accumulating the highest point total, pursuant to subsection (6) of this section, that are declared into the final or consolation, but do not qualify for the final or consolation, shall be designated "also eligible". The horse with the highest point total from the preliminary legs shall be designated as the "first also eligible" and the horse with the next highest point total shall be designated as the "second also eligible".

(b) A horse that is scratched in the final or consolation shall be replaced by the "first also eligible" and then the "second also eligible", if necessary.

1. If post positions have not been drawn at the time of the scratch, the "also eligible" shall take the place of the horse that has been scratched and shall participate in the normal draw.

2. If post positions have been drawn at the time of the scratch, the "also eligible" shall assume the post position of the horse that has been scratched.

3. A horse shall not be moved into the final or consolation as a replacement after the official scratch time deadline that is in effect at the host track.

Section 7. Final Order of Finish. The judges' "official order of finish" shall be used in determining eligibility to the final exclusive of all appeals yet to be decided at the time of closing of the entry box for final events.

Section 8. Detention. All starters shall be subject to the detention policy of the racetrack.

Section 9. Number of Starters.

(1) There shall not be more than:

(a) Ten (10) starters in each final race on a one (1) mile track; and

(b) Eight (8) horses on a one-half (1/2) or five-eighths (5/8) mile track.

(2) All horses shall be on the gate for the final race.

Section 10. Declaration Fees.

(1) For each horse declared to race in a preliminary leg, there shall be a declaration fee of one-half of one percent (0.5%) of the total purses distributed or to be distributed for each race in which the horse is declared. [\$500. If a preliminary leg splits into two (2) or more divisions, the declaration fee shall be \$500 per division.]

(2) The declaration fee shall be due to the racing association at the time of declaration and payable one (1) hour prior to post time of the race.

(3) Purses for the KSDF and KSBIF shall consist of money from:

- (a) Nominating fees;
- (b) Sustaining fees;
- (c) Declaration fees; and
- (d) Added money from the Commonwealth of Kentucky.

(4)

(a) Distribution of revenue for Kentucky Sire Stakes races shall be reviewed and addressed annually, not later than December 15 of each calendar year, by an advisory panel appointed by the Chairman of the commission and consisting of one (1) representative from each of the following:

1. The commission, who shall serve as the chairman of the panel;

2. The Kentucky Harness Horseman's Association;

3. The Kentucky Harness Association;

4. The host racetrack; and

5. One (1) participant in the fund nominated by the chairman of the commission from a group of up to four (4) nominees recommended by each of the above four (4) members having one (1) nomination each.

(b) Each member of the panel shall serve from July 1 through June 30 of the following year and shall be a resident of Kentucky.

(c) The final determination regarding distribution of revenue shall be made by the commission.

Section 11. Divisions of Preliminary Legs.

(1) The total number of horses entered shall determine the number of divisions of the preliminary legs that shall be required.

(2) Preliminary legs shall be split into divisions as follows:

(a) One (1) mile track:

1. Twelve (12) horses or less entered - one (1) division race.

2. Thirteen (13) to twenty (20) horses entered - two (2) divisions.

3. Twenty-one (21) to thirty (30) horses entered - three (3) divisions.

4. Thirty-one (31) to forty (40) horses entered - four (4) divisions.

5. Forty-one (41) to fifty (50) horses entered - five (5) divisions.

6. Fifty-one (51) to sixty (60) horses entered - six (6) divisions.

(b) One-half (1/2) and five-eighths (5/8) mile track:

1. Nine (9) to ten (10) horses entered - one (1) division.

2. Eleven (11) to sixteen (16) horses entered - two (2) divisions.

3. Seventeen (17) to twenty-four (24) horses entered - three (3) divisions.

4. Twenty-five (25) to thirty-two (32) horses entered - four (4) divisions.

5. Thirty-three (33) to forty (40) horses entered - five (5) divisions.

6. Forty-one (41) to forty-eight (48) horses entered - six (6) divisions.

(c) If the need exists for seven (7) or more divisions, eligibility

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to the final shall be determined in a manner consistent with the published conditions.

Section 12. Gait.

(1) Gait shall be specified by the owner of the horse on or before the first two (2) year old payment.

(2)

(a) Change of gait may be made at the time of declaration at the track.

(b) Sustaining payments shall remain in the funds of the original gait specified.

(3) A horse shall not race on both gaits in the same year.

Section 13. Divisions. A race shall be raced in separate divisions as follows:

(1) Colt, gelding, ridgeling divisions; and

(2) Filly divisions.

Section 14. Purse Distributions.

(1) The purses awarded for all races shall be distributed on the following percentage basis:

(a) Five (5) starters - fifty (50) percent, twenty-five (25) percent, twelve (12) percent, eight (8) percent, and five (5) percent;

(b) Four (4) starters - fifty (50) percent, twenty-five (25) percent, twelve (12) percent, eight (8) percent, and the remaining five (5) percent reverts back to the fund;

(c) Three (3) starters - fifty (50) percent, twenty-five (25) percent, twelve (12) percent, and the remaining thirteen (13) percent reverts back to the fund;

(d) Two (2) starters - fifty (50) percent, and twenty-five (25) percent, and the remaining twenty-five (25) percent reverts back to the fund; and

(e) One (1) starter - fifty (50) percent, and the remaining fifty (50) percent reverts back to the fund.

(2) The percentage basis established by subsection (1) of this section shall apply at each of the Kentucky pari-mutuel tracks.

Section 15. Cancellations.

(1) If circumstances prevent the racing of an event and the race is not drawn, all funds allocated to the division in each of the preliminary legs or the final shall be refunded and prorated to the owners of the horses eligible at the time of cancellation.

(2) The eligible horses shall include only horses that made the payments required by Section 20 of this administrative regulation.

(3) The added monies provided by the Commonwealth of Kentucky for use in the KSDF and KSBIF shall be disbursed by December 15 of each calendar year in accordance with the formula created by the panel as set out in Section 10(4) of this administrative regulation.

Section 16. Qualifying.

(1) Any horse declared into a Kentucky Sires Stakes race shall:

(a) Show at least one (1) charted race line with no breaks within forty-five (45) days prior to the day of the race; and

(b) Have satisfied the following time requirements:

1. On a track larger than five-eighths (5/8) of a mile:

a. A two (2) year old trotter shall have been timed in two minutes and six seconds (2:06) or faster;

b. A two (2) year old pacer shall have been timed in two minutes and four seconds (2:04) or faster;

c. A three (3) year old trotter shall have been timed in two minutes and two seconds (2:02) or faster; and

d. A three (3) year old pacer shall have been timed in two minutes and zero seconds (2:00) or faster.

2. On a five-eighths (5/8) mile track:

a. A two (2) year old trotter shall have been timed in two minutes and seven seconds (2:07) or faster;

b. A two (2) year old pacer shall have been timed in two minutes and five seconds (2:05) or faster;

c. A three (3) year old trotter shall have been timed in two minutes and three seconds (2:03) or faster; and

d. A three (3) year old pacer shall have been timed in two minutes and one second (2:01) or faster.

3. On a one-half (1/2) mile track:

a. A two (2) year old trotter shall have been timed in two minutes and eight seconds (2:08) or faster;

b. A two (2) year old pacer shall have been timed in two minutes and six seconds (2:06) or faster;

c. A three (3) year old trotter shall have been timed in two minutes and four seconds (2:04) or faster; and

d. A three (3) year old pacer shall have been timed in two minutes and two seconds (2:02) or faster.

(2) A horse shall be scratched from a race if the person declaring the horse has failed to advise the race secretary of a start that is not reflected on the electronic eligibilities.

(3) The requirements of this section shall apply both to wagering and nonwagering races.

Section 17. Purse Allocations.

(1) At a scheduled meeting of the commission, the commission shall:

(a) Establish the distribution of funds for stakes races for the upcoming year; and

(b) Authorize expenditures at a time it designates.

(2) The racing dates for KSDF and KSBIF stakes shall be issued after the track has established its race dates.

Section 18. Promotions. The KSDF or KSBIF may[shall] provide a trophy for each event, and the program that provides the trophy shall purchase the trophy out of its fund.

Section 19. Nomination Fees.

(1) After payment of the mare or stallion nomination fee, foals shall remain eligible for events each year by making the required sustaining and declaration payments for that year, as set forth in Section 20. The "KSDF/KSBIF Kentucky Sire Stakes (KYSS) Nomination Form," KHRC 7-040-1, shall be filed with the commission along with the nomination and sustaining fees.

(2) After payment of the yearling nomination fee, foals shall remain eligible for events each year by making the required sustaining and declaration payments for that year, as set forth in Section 20. The "KSDF/KSBIF Kentucky Sire Stakes (KYSS) Nomination Form," KHRC 7-040-1, shall be filed with the commission along with the nomination and sustaining fees.

(3)[(2)] The two (2) year old March 15 payment shall be made [in order] to remain eligible to the KSDF and KSBIF as a three (3) year old without penalty, except as provided in Section 20.

(4)[(3)] Nomination and sustaining payments shall be made to the KSDF and KSBIF in U.S. funds by a money order or a check drawn on a U.S. bank account.

Section 20. Nomination Schedule.

(1) Mares or Stallions shall be nominated by December 31 of the year of conception of the horse sought to be eligible by submitting a completed "KSDF/KSBIF Stallion Certificate of Eligibility Form," KHRC 7-040-2, or "KSDF/KSBIF Mare Certificate of Eligibility Form," KHRC 7-040-3. The nomination fee shall be set forth in KHRC 7-040-2 or 7-040-3, except as provided in subsection (4) of this section. [Yearlings shall be nominated by May 15 of their yearling year, except as provided in subsection (4) of this section.]

(2) For yearlings sired by a standardbred stallion or mare that resided in Kentucky during the year of conception for a period no less than 180 days [residing in Kentucky] and registered with the KSDF and KSBIF, the nomination fee shall be set forth in the "KSDF/KSBIF Kentucky Sire Stakes (KYSS) Nomination Form," KHRC 7-040-1, except as provided in subsection (5) of this section [forty (40) dollars per yearling]. [For yearlings sired by a standardbred stallion not residing in Kentucky, the nomination fee shall be eighty (80) dollars per yearling.]

(3) Nominated horses shall be registered with the USTA, Standardbred Canada, or other appropriate international harness racing governing agency and shall be properly identified to the satisfaction of the commission at the time of the nomination. Identification shall be determined by the official registration maintained by the USTA, Standardbred Canada, or other

appropriate international harness racing governing agency.

(4) If a mare is not nominated to the KSDF and KSBIF by December 31 of the year of conception, the mare shall be nominated by submitting a ["Late] KSDF/KSBIF Application for Late Mare Registration, [Mare Certificate of Eligibility Form,"] KHRC 7-040-4, and paying a penalty as set forth in KHRC 7-040-4.

(5) If a horse sired by a standardbred stallion or mare that resided in Kentucky during the year of conception, for a period no less than 180 days, and registered with the KSDF and KSBIF is not nominated during its yearling year, the horse may be nominated by [prior to] March 15 of its two (2) year old year by submitting the "KSDF/KSBIF Kentucky Sire Stakes (KYSS) Nomination Form," KHRC 7-040-1, and paying a penalty as set forth in KHRC 7-040-1. [if:]

[(a) For horses sired by a standardbred stallion residing in Kentucky and registered with the KSDF and KSBIF, a nomination fee of \$500 is made by March 15 of the horse's two (2) year old year, along with the sustaining payment required by subsection (5)(a) of this section; or

(b) For horses sired by a standardbred stallion not residing in Kentucky, a nomination fee of \$600 is made by March 15 of the horse's two (2) year old year, along with the sustaining payment required by subsection (5)(a) of this section.]

(6) For three (3) year old horses that fail to make the mandatory March 15 two (2) year old sustaining payment, the horse may be nominated by February 15 of its three (3) year old year by submitting a KHRC 7-040-1 and paying a penalty as set forth in KHRC 7-040-1.

[(5) Sustaining payments shall be as follows:

<u>(a) TWO (2) YEAR OLD PAYMENTS</u>	
March 15	\$300
April 15	\$300
May 15	\$300
March 15 payment shall be mandatory to make entry eligible as a three (3) year old.	
<u>(b) THREE (3) YEAR OLD PAYMENTS</u>	
February 15	\$300
March 15	\$300
April 15	\$300]

Section 21. Early Closing Events. The commission may provide for separate early closing events for Kentucky-bred horses.

Section 22. Stallion and Breeder Awards. The commission may provide for stallion and breeder awards for Kentucky-bred horses.

Section 23. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "KSDF/KSBIF Kentucky Sire Stakes (KYSS) Nomination Form", KHRC 7-040-1, 2023[11/2018];

(b) "KSDF/KSBIF Stallion Certificate of Eligibility Form", KHRC 7-040-2, 2023[11/2018]; [and]

(c) "KSDF/KSBIF Mare Certificate of Eligibility Form", KHRC 7-040-3, 2023; and

(d) "KSDF/KSBIF Application for Late Mare Registration", KHRC 7-040-4, 2023[11/2018].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available at https://khrc.ky.gov/new_docs.aspx?cat=32.

CONTACT PERSON: Jennifer Wolsing; General Counsel; 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511; phone +1 (859) 246-2040; fax +1 (859) 246-2039; email jennifer.wolsing@ky.gov.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

BOARDS AND COMMISSIONS
Board of Chiropractic Examiners
(Amended After Comments)

201 KAR 21:041. Licensing; standards, fees.

RELATES TO: KRS 312.085, 312.095, 312.145, 312.175

STATUTORY AUTHORITY: KRS 312.019, 312.085, 312.095, 312.175

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes the procedures relating to application for licensure, license renewal, and fees.

Section 1. Initial Application. An applicant for initial licensure shall submit to the board:

- (1) A completed New Licensee Application; and
- (2) A nonrefundable application fee of \$350.

(3) If the initial applicant graduated from chiropractic school more than four (4) years ago, proof of successfully passing the Special Purposes Examination for Chiropractic given by the National Board of Chiropractic Examiners within the past six (6) months shall be submitted to the board unless the initial applicant submits proof acceptable to the board of active practice under a license in good standing in another state or jurisdiction. In determining whether to accept proof of active practice, the board shall consider the following submitted by the licensee in writing:

(a) The number, or approximate number, of patients treated per week;

(b) The practice location(s) and address(es) at which the licensee has practiced, and the month and years of practice at each respective location; and

(c) Any relevant information the licensee may submit to show active practice.

Section 2. Licenses. Each license by the board shall:

- (1) Set forth the:
 - (a) Name of the issuing board;
 - (b) Name of the licensee;
 - (c) Number of license; and
 - (d) Date of the license issuance;
- (2) Be signed by a minimum of three (3) members of the board; and
- (3) Have the seal of the board affixed.

Section 3. License Renewal.

- (1)
 - (a) Each licensee of the board shall annually renew the license on or before the first day of March.
 - (b)
 1. A licensee seeking active status shall:
 - a. Submit a completed Application for Annual License Renewal; and
 - b. Pay a renewal fee of \$250.
 2. A licensee seeking inactive status shall:
 - a. Submit a completed Annual Inactive License Renewal Application; and
 - b. Pay a renewal fee of seventy-five (75) dollars.
 - (2) The amount of the restoration fee established by KRS 312.175(2) and (4) shall be \$250 per year, or any part of a year.
 - (3) Continuing education requirements.
 - (a) Each active licensee shall complete at least twelve (12) hours of board-approved continuing education, with:
 1. A minimum of six (6) hours of the required twelve (12) hours obtained at a live event, which is an event at which both the licensee and presenter are present in-person;
 - 1.[2.] No more than eight (8) hours completed in a day; and
 - 2.[3.] Proof of completion submitted with the Application for

Annual License Renewal upon request by the Board.

~~(b) A new licensee shall complete a two (2) hour jurisprudence course, provided by the board, by the licensee's first renewal[within one (1) year of the date of the licensee's initial license approval]; but shall not otherwise be required to complete the continuing education requirements set out in (3)(a) above until after the licensee's first renewal and before the licensees' second renewal.[The course shall account for two (2) of the twelve (12) hours of continuing education required by paragraph (a) of this subsection.~~

~~(c) A new licensee shall complete the licensee's required twelve (12) hours of continuing education by the first relicensing period following the completion of his or her first calendar year in practice.]~~

~~(c)[(d)] An inactive licensee may renew the inactive license without meeting the continuing education requirements required by this subsection.~~

(d) No continuing education course may be repeated for credit within the same renewal period.

Section 4. Activation of an Inactive License.

(1) To activate an inactive license, a licensee shall submit:

(a) A completed Application for Activation or Reinstatement of Kentucky License;

(b) The renewal fee required by Section 3(1)(b) of this administrative regulation;

(c) Proof that the licensee has met the continuing education requirements established by Section 3(3) of this administrative regulation; and

(d) License verification from each state or jurisdiction from which the licensee has held a license.

(2) If the licensee was inactive for more than four (4) years, proof of successfully passing the Special Purposes Examination for Chiropractic given by the National Board of Chiropractic Examiners within the past six (6) months shall be submitted to the board unless the licensee submits proof acceptable to the board of active practice under a license in good standing in another state or jurisdiction. In determining whether to accept proof of active practice, the board shall consider the following submitted by the licensee in writing:]-

(a) The number, or approximate number, of patients treated per week;

(b) The practice location(s) and address(es) at which the licensee has practiced, and the month and years of practice at each respective location; and

(c) Any relevant information the licensee may submit to show active practice.

Section 5. Denial or Refusal of License. The board may deny or refuse to renew a license if an applicant or licensee:

(1) Has a conviction for a felony or violation of any law involving moral turpitude; or

(2) Violates any of the provisions of KRS Chapter 312 or 201 KAR Chapter 21.

Section 6. Change of Address. Each licensee shall notify the board within ten (10) days of each change of mailing address or place of business.

Section 7. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Application for Licensure, DPL-KBCE-01, March 2023;["New Licensee Application", 2016;]

(b) "Application for Annual License Renewal", DPL-KBCE-03, March 2023;[September 2020;]

(c) "Annual Inactive License Renewal Application", 2013; and
(c)[(d)] "Application for Activation or Reinstatement of Kentucky License", DPL-KBCE-04, March 2023[2013].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of

VOLUME 50, NUMBER 1– JULY 1, 2023

Chiropractic Examiners, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. JAMES ENGLAND, Chair

APPROVED BY AGENCY: June 14, 2023

FILED WITH LRC: June 14, 2023 at 12:05 p.m.

CONTACT PERSON: Clayton Patrick, General Counsel,
Department of Professional Licensing, 500 Mero Street 237 CW,
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Clayton.Patrick@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clayton Patrick

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes the procedures relating to application for licensure, license renewal, and fees.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 312.019.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes requirements related to licensing standards and continuing education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 312 by carrying out the legislative mandate for the board to establish requirements for licensing standards and continuing education.

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

(a) How the amendment will change this existing administrative regulation: The Amendment will establish licensing standards for initial applicants, allow licensees to obtain continuing education from on-line sources without limitation but clarify that licensees may not repeat an education program for credit during a single renewal period, and will establish licensing standards for reactivation and reinstatement.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to establish licensing standards for initial applicants, reactivation, and reinstatement to protect the public and to allow chiropractors to obtain continuing education by either in-person or online attendance without restriction requiring in-person training and clarify that licensees may not repeat a training for credit during a renewal period.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes requirements related to licensing standards for initial applicants, reactivation or reinstatement and continuing education.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes requirements related to licensing standards for initial applicants, reactivation or reinstatement and continuing education and clarify that a licensee may not repeat a program for credit during a renewal period.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 919 active licensed chiropractors and 119 inactive licensed chiropractors practicing in the Commonwealth of Kentucky, as well as an unknown number of initial applicants; and an unknown number of their patients who depend on their chiropractor having the appropriate licensing standards and remaining current with their training.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation will require applicants for reactivation or reinstatement to take the SPEC exam, or show proof of active practice within the last four (4) years, and require initial applicants who have graduated more than four (4) years to take the SPEC exam, or show proof of active practice within the last four (4) years, that is satisfactory to the board and also allow chiropractors to obtain continuing education from sources other than live, in-person providers which may reduce the costs associated with time and travel to the event.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The initial applicant or the applicant for reactivation or reinstatement who must show proof of successful passage of the SPEC exam may incur the cost of the exam when they cannot show proof of active practice within the last four (4) years, in the approximate amount of \$1500.00. This regulation should add no additional cost to the licensed chiropractor in obtaining continuing education which may reduce the costs associated with time and travel to the event.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation will allow initial applicants and those for reactivation or reinstatement to ensure they have adequate knowledge to perform their duties as required by law and will allow chiropractors to obtain continuing education from both in-person and online providers without restriction.

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

(a) Initially: This administrative regulation does not create an additional cost for the administrative body and any additional costs would be minimal.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Chiropractic Examiners is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable because similarly situated licensees are treated similarly under 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 Board of Chiropractic Examiners.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 312.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 not generate revenue for state or local

government.

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

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

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to the agency beyond regular monitoring of continuing education for license renewals. There may be additional costs to the agency for the review of experience in the last 4 years, but it will be minimal.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(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 is indeterminable but could occur due to reduction in time and travel expenses for continuing education.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Cost savings is indeterminable but could occur due to reduction in time and travel expenses for continuing education.

(c) How much will it cost the regulated entities for the first year? The initial applicant or the applicant for reactivation or reinstatement who must show proof of successful passage of the SPEC exam may incur the cost of the exam when they cannot show proof of active practice within the last four (4) years, in the approximate amount of \$1500.00. This regulation should add no additional cost to the licensed chiropractor in obtaining continuing education and may reduce the costs associated with time and travel to the event.

(d) How much will it cost the regulated entities for subsequent years? The cost of obtaining required continuing education only, which is indeterminable.

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 initial applicant or the applicant for reactivation or reinstatement who must show proof of successful passage of the SPEC exam may incur the cost of the exam when they cannot show proof of active practice within the last four (4) years, in the approximate amount of \$1500. This regulation should add no additional cost to the licensed chiropractor in obtaining continuing education and may reduce the costs associated with time and travel to an event.

(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 COMMISSIONS
Board of Chiropractic Examiners
(Amended After Comments)

201 KAR 21:042. Standards, applications[application] and approval of continuing education.

RELATES TO: KRS 312.085, 312.095, 312.145, 312.175

STATUTORY AUTHORITY: KRS 312.019, 312.085, 312.095, 312.175

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes standards for continuing education and the procedures relating to the application and approval of continuing education.

Section 1. Standards for Continuing Education.

(1) Continuing education shall be ~~either:~~

~~(a) A post graduate course of study at or sponsored by a chiropractic college accredited by the Council on Chiropractic Education or its successors; or~~

~~(b) A continuing education program approved by the board, or by a committee designated by the board to act between sessions of the board.~~

(2) The continuing education program shall be:

~~(a) A post graduate course of study at or sponsored by a chiropractic college accredited by the Council on Chiropractic Education or its successors; or~~

~~(b)[(a)] Sponsored by a national or state chartered organization of chiropractors or a chiropractic college; and~~

~~(c)[(b)] Open to all doctors of chiropractic in Kentucky who desire to attend.~~

(3) The instructors and speakers shall be in the field of chiropractic, chiropractic education, or allied sciences.

(4) The programs to be presented shall contain subjects of clinical benefit to licensees and on a postgraduate level of education.

(5) The programs shall comply with the Kentucky chiropractic scope of practice as defined by KRS 312.017; and the board or its designated committee shall determine whether online versus live education is appropriate for the subject matter being offered in its determination whether to approve programs as proposed.

Section 2. Requirements for Online Continuing Education.

(1) Any entity submitting an online course for approval shall be Pre-Approved Continuing Education (PACE) Commission certified; and submit the program through the PACE pre-check program using the Kentucky Board of Chiropractic Examiners Continuing Education Application form.~~[PACE Pre-Check Expedited Course Submission for Kentucky form. Any entity not certified through PACE shall submit an application for approval for a program directly to the board through December 31, 2020 by completing the Kentucky Board of Chiropractic Examiners Continuing Education Application.]~~

(2) The program shall:

(a) Have a mechanism to ensure that users view each page of the program;

(b) Ensure the user has earned all of the time required for the program;

(c) Have a mechanism in place for the user to be able to contact the provider regarding questions about the continuing education programs;

(d) Include a mechanism to evaluate the user's knowledge of the subject matter contained in the program;

(e) Provide a printed verification or allow the user to print verification only upon completion of the program;~~[-and]~~

(f) Ensure that the course time cannot be earned away from the program and that automatic lock out occurs if the keyboard becomes unattended; and

(g) Have an original recording date within five (5) years from the time the course is approved for credit by the board.

(3) Programs shall be completed and earned one (1) at a time. The user of a program shall not earn credit for multiple windows or programs completed simultaneously.

Section 3. Application for Approval.

(1) The sponsoring party of a proposed educational program for license renewal shall apply for approval of the program prior to its presentation by submitting ~~[either the PACE Pre-Check Expedited Course Submission for Kentucky form if PACE certified, or if not certified through PACE by submitting]~~ the Kentucky Board of Chiropractic Examiners Continuing Education Application, and by providing to the board:

- (a) The name of the course;
- (b) The name of the sponsoring organization;
- (c) The objective of the program;
- (d) The number of classroom hours over which the educational program will be presented, and the dates presented;
- (e) The names of the instructors and speakers and the name and address of the institution with which they are associated, if applicable;
- (f) The instructors' or speakers' educational background and other relevant qualifications;
- (g) The name and address of the person authorized to certify attendance; and
- (h) An educational program review fee as established in subparagraph 1. through 3. of this paragraph.

1. Live Events Only - A live event is an event at which both the presenter and attendee are present in person. A minimum fee of twenty-five (25) dollars for a live one-time event of sixteen (16) hours or less. Any event over sixteen (16) hours will be two (2) dollars per requested credit hour with a maximum fee of \$100. For events with multiple dates and locations there will be an additional twenty-five (25) dollar fee.

2. Online Events Only - A minimum fee of twenty-five (25) dollars for a live one-time event or recorded event of sixteen (16) hours or less. Any event over sixteen (16) hours will be two (2) dollars per requested credit hour with a maximum fee of \$100. The online event shall remain approved for one (1) calendar year.

3. Live Event That Will Also Be Recorded To Be Used As Online CE – A minimum fee of fifty (50) dollars for an event of sixteen (16) hours or less. Any event over sixteen (16) hours will be two (2) dollars per requested credit hour with a maximum fee of \$100. The online event shall remain approved for one (1) calendar year.

(2) The educational program may be monitored by an officer of the board, the field coordinator of the board, or a person designated by the president of the board.

(3)

(a) A proposed program shall be received by the board for approval at least sixty (60) days prior to the date of the presentation.

(b) The board, or a designee of the board to act between meetings of the board, shall give written notification of the board's approval or disapproval of the program to the sponsoring party not more than thirty (30) days after receiving the proposed educational program.

(c) An online course shall remain approved for one (1) calendar year from a date of the event provider's choosing if that date is no earlier than sixty (60) days from the date the board received the submission for approval.

Section 4. Incorporation by Reference.

(1) ~~The following material is incorporated by reference:~~

~~(a) "PACE Pre-Check Expedited Course Submission for Kentucky form", (2020); and~~

~~(b)] "Kentucky Board of Chiropractic Examiners Continuing Education Application", DPL-KBCE-05, June~~March~~ 2023, is incorporated by reference~~~~[September 2020].~~

(2) These materials may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Chiropractic Examiners, 500 Mero Street, Frankfort, Kentucky 40601, from 8:00 a.m. to 4:00 p.m.

DR. JAMES ENGLAND, Chair

APPROVED BY AGENCY: June 14, 2023

FILED WITH LRC: June 14, 2023 at 12:05 p.m.

CONTACT PERSON: Clayton Patrick, General Counsel, Department of Professional Licensing, 500 Mero Street 237 CW, phone (502) 782-0562 (office), fax (502) 564-4818, email Clayton.Patrick@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clayton Patrick

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes requirements relating to continuing education.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 312.019.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes requirements relating to continuing education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 312 by carrying out the legislative mandate for the board to establish regulations for the practice of chiropractic.

(2) If 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 clarify the standards for continuing education, including establishing a requirement that an original recording date for any online program be within five (5) years from the time the course is approved for credit by the board, amend the continuing education application form, and make a technical correction to reference a new form and delete obsolete forms.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify the standards for continuing education, amend the materials incorporated by reference, and make technical corrections to reference a new form and delete obsolete forms.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation sets standards for continuing education and makes a technical correction to reference a new form and delete obsolete forms.

(d) How the amendment will assist in the effective administration of the statutes: The amendment sets standards for continuing education and ensure content remains current within five (5) years of the original recording of any online program, and amend forms to reflect these changes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment to the administrative regulation will have no affect other than to clarify established standards for continuing education and reference a new form and delete obsolete 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: The regulated entities will be required to include the original recording date of any online education program on the application for board approval.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The change combines two existing forms into one form which will reduce confusion by providers and any delay in approval and will ensure that approved continuing education programming is compliant with the "original recording within five (5) years" requirement.

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

(a) Initially: None. This administrative regulation does not create a cost for the administrative body

(b) On a continuing basis: None. This administrative regulation does not create a cost for the administrative body

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Chiropractic Examiners is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable because similarly situated licensees are treated similarly under 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 Board of Chiropractic Examiners.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 312.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 not generate revenue for state or local government.

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

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

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to the agency.

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? This regulation should add no additional cost to the licensed chiropractor in obtaining continuing education and may reduce the costs associated with time and travel to the event.

(d) How much will it cost the regulated entities for subsequent years? The cost of obtaining required continuing education only, which cannot now be determined.

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

Cost Savings (+/-): None

Expenditures (+/-): None

Other Explanation:

(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.

JUSTICE AND PUBLIC SAFETY CABINET Internal Investigation Branch (Amended After Comments)

500 KAR 2:020. Filing and processing SLEO commissions.

RELATES TO: KRS 15.334, 15.383, 61.300, 61.900-61.930, 61.990, 61.991, 62.010, 62.990

STATUTORY AUTHORITY: KRS. 61.904

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.902 authorizes the Secretary of the Justice and Public Safety Cabinet to commission special law enforcement officers. KRS 61.904 requires the Secretary to promulgate administrative regulations that are reasonable and necessary to carry out the provisions of KRS 61.900 to 61.930. This administrative regulation establishes the criteria and procedures required for filing and processing applications for commissions to be a special law enforcement officer.

Section 1. Definitions.

(1) "Cabinet" is defined by KRS 61.900(3).

(2) "Governmental unit" means the unit or agency of state, county, city, or metropolitan government or other governmental entity authorized by KRS 61.900(6) or 61.902 to employ SLEOs["Kentucky Law Enforcement Council" or "KLEC" means the administrative body established in KRS 45.345].

(3) "Secretary" is defined by KRS 61.900(5).

(4) "SLEO Act" means the Special Law Enforcement Officer Act found in KRS 61.900 to 61.930.

(5) "SLEO program administrator" means the person designated or appointed by the Secretary of the Justice and Public Safety Cabinet to administer the Special Law Enforcement Officer Program whose address is: SLEO Program Administrator, Internal Investigations Branch, 125 Holmes Street, Frankfort, Kentucky 40601[Kentucky Law Enforcement Council, 521 Lancaster Avenue, Suite 401, Richmond, Kentucky 40475].

(6) "Special Law Enforcement Officer" or "SLEO" is defined by KRS 61.900(6).

Section 2. Qualifications to Apply for Commission as a Special Law Enforcement Officer. To qualify for a commission as a SLEO[special law enforcement officer] pursuant to KRS 61.900 to 61.930, an individual shall comply with the conditions and requirements established in KRS 61.906.

Section 3. Application for Commission as a Special Law Enforcement Officer.

(1) An applicant shall meet [all of] the requirements of the SLEO Act before a commission is granted.

(2) An applicant shall provide to the governmental unit two (2) complete, signed and notarized Special Law Enforcement Officer

(SLEO) Application Forms~~[SLEO Application Forms]~~ (SLEO-1).

(3) The governmental unit shall submit both application forms to the ~~[Justice and Public Safety Cabinet]~~ SLEO program administrator.

(4) The application forms shall contain the following information:

(a) The name, address, telephone number, and detailed personal description of and information about the applicant; and

(b) All arrests and convictions, including traffic offenses committed within the past ten (10) years, violations, misdemeanors, or felonies as requested on the application and any other information necessary to conduct a criminal history check.

(5) Any false ~~or~~ misleading information, or withholding of information requested on the application or by the cabinet investigator may be grounds for rejection without further consideration.

Section 4. Additional Requirements.

(1) In addition to the application form, an applicant shall provide to the governmental unit who shall submit to the SLEO program administrator the following with his or her application:

(a) A copy of the applicant's high school diploma, GED, official college transcript, or college degree~~[or GED]~~;

(b) A ~~[certified]~~ copy of the applicant's certified birth certificate;

(c) Two (2) recent photographs of the individual (full face) measuring not larger than three (3) inches by five (5) inches and taken within ~~[the last]~~ thirty (30) days of the date the application is submitted;

(d) If the applicant is a veteran, a copy of his or her military release (Form DD-214);

(e) An Authority to Release Information Form, SLEO-2, which allows the release of all necessary information to the SLEO program administrator. It shall be signed by the applicant and witnessed by a second person;

(f) A Letter of Intent Form, SLEO-3, completed by the governmental unit giving the name of the applicant, the specific public property to be protected, and the signature of the authorizing official of the requesting governmental unit;

(g) Proof that the applicant has successfully completed first aid and cardiopulmonary resuscitation (CPR) training provided according to the American Heart Association or the American Red Cross requirements and is certified in first aid and CPR; and

(h) The application fee required by KRS 61.908.

(2) ~~[If not on file from a previous application,]~~ An applicant shall be fingerprinted by an approved vendor. The governmental unit shall contact the SLEO program administrator for information related to an approved vendor~~[at the AFIS Section, Kentucky State Police, 1250 Louisville Road, Frankfort, Kentucky 40601 or at a local law enforcement office].~~

(3) The applicant shall arrange for and be interviewed by the SLEO program administrator or assigned cabinet investigator before a commission is granted.

(4) All SLEO applicants shall sign and the governmental unit shall submit to the cabinet the SLEO Acknowledgment Form, SLEO-4, which indicates that the applicant~~[he]~~;

(a) ~~[Has]~~ Received, read, and understands:

1. Provisions of the SLEO Act, KRS 61.900-61.930;

2. Administrative regulations in 500 KAR Chapter 2;

3. Penalties imposed for violating the SLEO Act and its administrative regulations; and

4. KRS 61.300, 61.990, 61.991, 62.010, and 62.990; and

(b) Acknowledges that the applicant's~~[his]~~ authority is limited and restricted under the SLEO Act~~[, and]~~

~~(c) Understands and acknowledges that his commission as a SLEO does not give him the right or authority to carry a concealed weapon off the premises of the public property, unless he holds a license to carry a concealed deadly weapon issued pursuant to KRS 237.110 or meets the requirements of 18 U.S.C. Section 926B or Section 926C.]~~

Section 5. Fees.

~~[(1)]~~ All fees required by KRS 61.908 shall be:

~~(1) Submitted with the application form;~~~~[Paid in advance and are]~~

~~(2) Nonrefundable; and~~~~[.]~~

~~(3) [(2)]~~ ~~[Fees shall be]~~ Paid in the form of a check or money order made payable to the Kentucky State Treasurer.

Section 6. Approval of Application.

(1) If the applications and all required documents are in order, and if the criminal history information record review and background investigation are favorably completed, the governmental unit for whom the SLEO applicant will be employed shall notify the Department of Criminal Justice Training concerning any training the applicant needs ~~[in order]~~ to satisfy the requirements of KRS 61.906(2)(f).

(2) In notifying the Department of Criminal Justice Training, the governmental unit shall describe the training needed by the applicant. The Department of Criminal Justice Training shall schedule and conduct the training and collect the related fees as prescribed in KRS 61.908(3), (4), and (5). An applicant who has successfully completed the training previously shall not be required to repeat the course.

(3) The Department of Criminal Justice Training shall notify the governmental unit of the results of the training upon completion.

Section 7. Receipt of Defective or Falsified Application.

(1) If the application is incomplete, or otherwise defective in some way other than those referenced in Section 3(5) of this regulation, or in conflict with the SLEO Act or its administrative regulations, 502 KAR Chapter 2, the cabinet shall notify the governmental unit.

~~(2) Upon notice that an applicant's application is incomplete or otherwise defective, the governmental unit shall notify the applicant.~~ An application may be corrected and resubmitted at no additional cost if it is resubmitted to the SLEO program administrator within sixty (60) days of the date the governmental unit~~[applicant]~~ is sent notice of the deficiencies by the SLEO program administrator.

(3) An application that has been falsified~~[or]~~ contains material omissions, or contains incomplete information may be rejected, and the applicant shall be prohibited from submitting an application for commission as a SLEO for one (1) year.

Section 8. The Grant of the Commission and the Required Oath of Office.

(1) A commission for a SLEO~~[special law enforcement officer]~~ shall be validated and granted as follows:

(a) If the applicant has successfully satisfied the requirements of the act and a commission has been recommended, a commission certificate ~~[and the recommendation]~~ shall be forwarded by the SLEO program administrator to the secretary or the secretary's designee for review.

(b) After the commission is issued by the secretary or the secretary's designee, a copy of the commission shall be placed in the SLEO's~~[officer's]~~ file maintained by the cabinet.

(2) The governmental unit shall be notified that the commission has been granted.

(a) One (1) of the original applications and two (2) County Clerk Oath verification forms (SLEO-6) shall be forwarded by the cabinet to the governmental unit whose property is to be protected.

(b) The governmental unit shall arrange for the appointed applicant to take the oath of office.

(3) The appointed applicant shall take:

(a) One (1) of the applications and the two (2) County Clerk Oath verification forms to the county clerk in the county where the applicant is to serve; and

(b) The constitutional oath of office within thirty (30) days after notice of appointment.

(4) The county clerk shall then:

(a) Complete and sign the clerk's attestation on both County Clerk Oath verification forms~~[SLEO-6s]~~;

(b) Retain the application and one (1) of the County Clerk Oath

verification forms, for filing purposes in the county clerk's office; and

(c) Give the second County Clerk Oath verification form, signed by the clerk, to the applicant.

(5) The applicant shall return the second County Clerk Oath verification form, signed by the Clerk, to the governmental unit. The governmental unit shall return it to the ~~[cabinet]~~SLEO program administrator within thirty (30) days of the grant of the commission to indicate that the oath was administered and that the application and oath verification form are filed with the county clerk.

(6) Upon receipt of the oath verification, the commission certificate shall be forwarded by the cabinet to the governmental unit whose property is to be protected.

(7) If the second County Clerk Oath verification form, signed by the clerk, is not returned to the SLEO program administrator within thirty (30) days of the granting of the commission, the commission shall be null and void and the applicant shall be required to repeat the application process.

(8) The applicant shall not exercise the authority of a SLEO until the governmental unit has received the commission certificate from the cabinet.

(9) The commission certificate shall be kept by the governmental unit so long as the SLEO[officer] is employed or until his or her authority is terminated as a result of the expiration of the commission term or by action of the government unit or the secretary or the secretary's designee.

(10) The SLEO Commissions shall be issued for a period of two (2) years, or five (5) years if the SLEO is employed as a facilities security officer with the Kentucky State Police pursuant to KRS 16.187, if the SLEO[officer] continues to meet all statutory and regulatory criteria.

(11) After the governmental unit has received the SLEO commission certificate, the governmental unit shall issue an identification card that shall~~which is to~~ be carried by the SLEO [officer] whenever he or she is acting under the authority of KRS 61.900-61.930.

(12) The identification card shall be:

(a) Presented as requested by any duly sworn peace officer or cabinet official;

(b) Subject to control by the cabinet; and

(c) Comply with Section 11(4) of this administrative regulation.

(13) If for any reason a SLEO [officer] is terminated or otherwise relieved of his or her duties as a SLEO [officer] by the governmental unit or the cabinet, he or she shall immediately return this identification card to the SLEO's[officer's] governmental unit.

(14) The SLEO commission certificate shall be held by the governmental units and shall:

(a) Be available for inspection by the SLEO program administrator or his or her designee;

(b) Remain the property of the cabinet; and

(c) Be returned upon the SLEO's[officer's] authority being withdrawn for any reason.

Section 9. Special Provisions.

(1) Training pursuant to KRS 61.906(2)(f)2. A SLEO applicant may request approval from the Kentucky Law Enforcement Council (KLEC) for eighty (80) or more hours of training, if that training is not currently approved, by providing documentation verifying successful completion of the training and detailed information concerning the contents of the training to the SLEO program administrator. The training approval request shall be provided to the KLEC to review the request and make a decision.

(2) Training waiver. A SLEO applicant may apply for a training waiver by providing sufficient proof of past police experience, military records, or examination records that substantiates that the applicant meets the waiver requirements set forth in KRS 61.906(2)(f)2.

(3) Firearms and First Aid Proficiency. A SLEO applicant shall:

(a) Be certified in first aid and cardiopulmonary resuscitation (CPR) through training provided according to the American Heart Association or the American Red Cross requirements; and

(b) One (1) of the following:

1. Meet the marksmanship qualification requirements for a retired peace officer as specified in KRS 237.140; or

2. Fire twenty (20) rounds at an adult size silhouette target at a range of twenty-one (21) feet, with a handgun, and shall hit the target not less than eleven (11) times. The range test shall be conducted and certified by a firearms instructor trainer or certified firearms instructor trained pursuant to KRS 237.122 or by other firearms instructor program provided by the Department of Criminal Justice Training.

Section 10. Renewals.

(1) A letter of intent from the governmental unit stating its request to renew a commission, ~~and two (2) complete signed and notarized SLEO Renewal Application Forms (SLEO-5), and the renewal application fee required by KRS 61.908(2)~~ for each individual involved shall be filed with the SLEO~~[cabinet]~~ program administrator at least sixty (60) days before the expiration date of the existing commission.

(2) The applicant for renewal shall be fingerprinted by an approved vendor and undergo a background investigation to bring the applicant's[his] records up-to-date.

(3) In addition to the requirements set forth above in this section, for each renewed commission granted, the governmental unit and SLEO applicant shall comply with the requirements set forth in Section 8 of this administrative regulation.

Section 11. Governmental Units Employing SLEOs[SLEO Officers] - Records, Reports, and Responsibility.

(1) All governmental units employing SLEOs[SLEO officers] shall:

(a) Keep their files current as to the expiration date on each SLEO's[officer's] commission;

(b) Keep the individual SLEO's[officer's] commission certificates on file, to be returned to the cabinet upon termination of the SLEO[officer] and his or her authority;

(c) Provide proof to the SLEO program administrator~~[coordinator]~~ at the time of request for renewal that its SLEOs:

1. Are currently certified in First Aid and CPR; and

2. Have met the same marksmanship qualification required of certified peace officers in KRS 15.383; and

(d) Mail or email to the SLEO program administrator by June 30 of each year:

1. A current list of all active SLEO personnel; and

2. The number of arrests made or citations issued by the agency the previous calendar year.

(2) The unit shall post a copy of the SLEO administrative regulations, 500 KAR Chapter 2, and a copy of KRS 61.900-61.930, 61.990, and 61.991 of the SLEO Act in a conspicuous location in any office or building that is designated security headquarters for persons operating as SLEOs[SLEO officers].

(3) Complaints or unusual incidents involving SLEOs[SLEO officers] shall be handled by the governmental unit whose public property is being protected by the SLEO [officer] involved except:

(a) The governmental unit shall notify the ~~[cabinet]~~SLEO program administrator by:

1. Direct verbal communication within twenty-four (24) hours of any reported incident involving the misconduct or unlawful act by any of its SLEOs[SLEO officers]; and

2. A follow-up written report to be filed with the SLEO program administrator, within thirty (30) days of the original oral report, stating the details of the incident and listing any action taken by the governmental unit; and

(b) If formal charges are pending, the governmental unit ~~[or agency]~~ shall advise the SLEO program administrator as to the specific charge, trial date, and the final disposition of the charge.

(4) The governmental unit shall issue each SLEO[officer] an identification card upon the individual's appointment. The identification card shall be:

(a) Encased in plastic;

(b) Billfold size (approximately two and one-fourth (2 1/4) inches by three and one-half (3 1/2) inches); and

(c) Composed as follows:

1. One (1) side containing the following language: "The holder of this card ~~is[has been]~~ commissioned as a Special Law Enforcement Officer ~~[(SLEO)]~~, pursuant to KRS 61.902 ~~and[. As a SLEO, the holder of this card is]~~ deemed to be a peace officer within the meaning of KRS 527.020 ~~with[and may exercise]~~ the powers ~~set forth[of a peace officer]~~ in ~~[accordance with]~~ KRS 61.900 to 61.930~~;~~ and

2. The other side containing a full-faced photograph of the ~~SLEO[officer]~~ with his or her:

- a. Name;
- b. Identification or notation that the ~~SLEO[officer]~~ has been commissioned a "Special Law Enforcement Officer";
- c. Governmental unit employing the ~~SLEO[officer]~~;
- d. Badge number, if any; and
- e. Signature of the ~~SLEO's[officer's]~~ chief, supervisor, or employer.

(5) The governmental unit shall obtain and destroy the identification card from any ~~SLEO[officer]~~ whose employment is terminated.

Section 12. Violations.

(1) All governmental units utilizing SLEO's shall be subject to inspection and investigation by the cabinet as circumstances may warrant for possible violations.

(2) Violations may result in prosecution and recommendation to the secretary ~~[of the cabinet]~~ or the secretary's designee that the commission be revoked.

Section 13. Revocation or Suspension of SLEO Commissions.

(1) A SLEO may have his or her commission suspended or revoked in accordance with KRS 61.910.

(2) The ~~SLEO~~ program administrator shall notify the secretary or the secretary's designee of any violations of KRS 61.910, who shall send written notice of the alleged violation to the:

- (a) SLEO; and
- (b) Governmental unit employing the SLEO.

(3) The notice of alleged violation shall be sent to the SLEO and employing governmental unit by regular, first-class mail and by certified mail, return receipt requested to their last known addresses.

(4) The SLEO may request an administrative hearing before suspension or revocation is imposed. The request for hearing shall be in writing and shall be received by the SLEO program administrator within thirty (30) days of receipt by the SLEO of the notice of intent to seek suspension or revocation.

(5) The secretary or the secretary's designee shall suspend or revoke the commission of a SLEO who fails to request an administrative hearing within the thirty (30) ~~days[day-time period]~~.

(6) All administrative hearings shall be conducted in accordance with KRS Chapter 13B.

(7) The cabinet may temporarily suspend the commission of a SLEO prior to holding a hearing pursuant to KRS Chapter 13B if the cabinet believes that the safety of the public requires that action. If a commission is temporarily suspended prior to holding a hearing pursuant to KRS Chapter 13B, the cabinet shall hold a Chapter 13B hearing not later than thirty (30) days from the date of the temporary suspension unless the SLEO requests an extension for a time certain. If the SLEO requests an extension for a time certain, then the commission shall remain suspended until the conclusion of the hearing.

(8) If a SLEO commission is suspended or revoked:

(a) The SLEO program administrator shall notify the governmental unit involved to return the commission of the SLEO ~~[officer]~~;

(b) The governmental unit responsible for the SLEO ~~[officer]~~ shall forward a letter to the ~~SLEO[officer]~~ stating that:

1. His or her commission has been revoked or suspended; and
2. He or she shall immediately return the SLEO identification card to the governmental unit;

(c) Upon receipt of the card, the governmental unit shall destroy it; and

(d) The SLEO program administrator shall notify the county clerk in the ~~SLEO's[officer's]~~ county of jurisdiction of the revocation

or suspension.

Section 14. Procedures for Investigating Complaints or Unusual Incidents Involving SLEO Officers.

(1) Complaints or unusual incidents involving ~~SLEO's[SLEO officers]~~ shall be handled by the governmental units whose public property is being protected by the SLEO ~~[officer]~~ involved. The governmental unit shall notify the cabinet of all incidents involving their SLEO personnel as required by Section 11(3) of this administrative regulation.

(2) The SLEO program administrator or other assigned officers may investigate ~~[any and all]~~ complaints or unusual incidents involving ~~SLEOs[SLEO officers]~~, if there is reason to believe the provisions of KRS 61.900-61.930, 61.990, 61.991, or 500 KAR Chapter 2, or other applicable laws or administrative regulations have been violated and an investigation is necessary.

(3) Any investigation conducted by the cabinet shall become part of the official record of the SLEO ~~[officer]~~ involved.

Section 15. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Special Law Enforcement Officer (SLEO) Application Form", SLEO-1, ~~2023[3/2019]~~;

(b) "Authority to Release Information Form", SLEO-2, ~~2023[3/2019]~~;

(c) "Letter of Intent Form", SLEO-3, ~~2023[3/2019]~~;

(d) "SLEO Acknowledgment Form", SLEO-4, ~~2023[3/2019]~~;

(e) "Special Law Enforcement Officer (SLEO) Renewal Application Form", SLEO-5, ~~2023[3/2019]~~; and

(f) "County Clerk Oath", SLEO-6, ~~2023[3/2019]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Internal Investigations Branch, 125 Holmes Street, Frankfort~~[Kentucky Law Enforcement Council, 521 Lancaster Avenue, Suite 401, Richmond]~~, Kentucky ~~40601[40475]~~, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be viewed on the Justice and Public Safety Cabinet Web site in the SLEO area at <https://justice.ky.gov/Departments-Agencies/iib/Pages/sleo.aspx> or <https://justice.ky.gov/about/pages/lrcfilings.aspx>.

KERRY HARVEY, Secretary

APPROVED BY AGENCY: June 15, 2023

FILED WITH LRC: June 15, 2023 at 9:15 a.m.

CONTACT PERSON: Nathan Goens, 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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goens

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the application process for Special Law Enforcement Officers (SLEO) to protect specific public property; the responsibilities of employing governmental unit of SLEOs; renewals, suspension & revocation of SLEO commissions; and investigation of complaints or special incidents for SLEOs, pursuant to KRS 61.900-930.

(b) The necessity of this administrative regulation: As authorized by KRS 61.904, this administrative regulation is needed to carry out the provisions of KRS 61.900 to 61.930.

(c) How this administrative regulation conforms to the content of the authorizing statutes: As authorized by KRS 61.904, this administrative regulation sets forth the reasonable and necessary provisions to carry out the contents of KRS 61.900 to 61.930.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the application process for Special Law Enforcement Officers (SLEO) to protect specific public property; the responsibilities of employing governmental units of SLEOs; renewals, suspension & revocation of SLEO commissions; and investigation of complaints or special incidents for SLEOs,

pursuant to KRS 61.900-930.

(2) If 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 definition for governmental unit. It updates terminology throughout and updates the SLEO Program Administrator to the Internal Investigations Branch. The amendment also adds alternative methods to provide notice of violation to the SLEO and updates the SLEO forms.

(b) The necessity of the amendment to this administrative regulation: The instant amendments to the existing administrative regulation are necessary as it reflects the changing of SLEO Program Administrator from the Kentucky Law Enforcement Council to the Internal Investigations Branch.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to the existing administrative regulation updated the SLEO Program Administrator to the Internal Investigations Branch as reasonable and necessary to carry out the provisions of KRS 61.900-930 as authorized by KRS 61.904.

(d) How the amendment will assist in the effective administration of the statutes: The amendment streamlines the SLEO commission process; addresses changes to the entity responsible for SLEO program administration; provides updates to the renewal, suspension, and revocation process of SLEO commissions; and sets forth updates related to the investigation of complaints or special incidents for SLEOs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Capitol police, the Capital Plaza police, public school district security officers, public airport authority security officers, and the officers of the other public security forces established for the purpose of protecting specific public property.

(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 governmental units and their applying employees will have to comply with the application process and other program requirements to be commissioned and renew commissions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fees are established by statute (KRS 61.908) and are not imposed by the regulation. There is an initial \$25.00 application fee to be paid to the Kentucky State Treasurer. The commissions must be renewed every two years requiring a \$25.00 fee. There is a \$15.00 written exam fee, \$20.00 practical exam fee, and reasonable training fees to be paid by the applicant.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will have a commissioned officer for the protection of their public property with law enforcement authority.

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

(a) Initially: This regulation has already been implemented and there will only be nominal costs related to these amendments.

(b) On a continuing basis: There will no costs to the administrative body for continual implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cost is part of the budget for the Justice and Public Safety Cabinet.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will not be a need to increase fees, which are established by statute (KRS 61.908) and are not imposed by the regulation itself.

(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 fees. Fees

associated with SLEO are established in KRS 61.908.

(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 the Capitol police, the Capital Plaza police, public school district security officers, public airport authority security officers, and the officers of the other public security forces established for the purpose of protecting specific public property.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.900-61.930

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 fees are established by statute (KRS 61.908) and are not imposed by the regulation. However, for every SLEO commission, there is an initial \$25.00 application fee to be paid to the Kentucky State Treasurer. The commissions must be renewed every two years requiring a \$25.00 fee. There is also a \$15.00 written exam fee, \$20.00 practical exam fee, and reasonable training fees to be paid by the applicant.

(b) How 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 fees are established by statute (KRS 61.908) and are not imposed by the regulation. However, for every SLEO commission, there is an initial \$25.00 application fee to be paid to the Kentucky State Treasurer. The commissions must be renewed every two years requiring a \$25.00 fee. There is also a \$15.00 written exam fee, \$20.00 practical exam fee, and reasonable training fees to be paid by the applicant.

(c) How much will it cost to administer this program for the first year? The cost associated with administering the program, including application review and investigation, for the first year is approximately \$36,500.00.

(d) How much will it cost to administer this program for subsequent years? The cost associated with administering the program, including application review and investigation, is approximately \$36,500.00 for each subsequent year.

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 fees are established by statute (KRS 61.908) and are not imposed by the 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? The administrative regulation is not anticipated to generate any cost savings for the regulated entity 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 entity for subsequent years.

(c) How much will it cost the regulated entities for the first year? The fees associated with the SLEO Program are established by statute (KRS 61.908) and are not imposed by the regulation. However, for every SLEO commission, there is an initial \$25.00 application fee to be paid to the Kentucky State Treasurer. The

commissions must be renewed every two years requiring a \$25.00 fee. There is also a \$15.00 written exam fee, \$20.00 practical exam fee, and reasonable training fees to be paid by the applicant. for the first year. It is anticipated completion of the application to take around one (1) hour.

(d) How much will it cost the regulated entities for subsequent years? The fees associated with the SLEO Program are established by statute (KRS 61.908) and are not imposed by the regulation. However, for every SLEO commission, there is an initial \$25.00 application fee to be paid to the Kentucky State Treasurer. The commissions must be renewed every two years requiring a \$25.00 fee. There is also a \$15.00 written exam fee, \$20.00 practical exam fee, and reasonable training fees to be paid by the applicant. for the first year. It is anticipated completion of the application to take around one (1) hour.

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.

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amended After Comments)**

501 KAR 6:150. Eastern Kentucky Correctional Complex policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470(2), 439.590, 439.640(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470(2), 439.590, and 439.640(2) authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. 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 Eastern Kentucky Correctional Complex.

Section 1. Incorporation by Reference. (1) "Eastern Kentucky Correctional Complex Policies and Procedures", June 14[February 09], 2023[December 13, 2016], is incorporated by reference.

Eastern Kentucky Correctional Complex Policies and Procedures include:

[EKCC 01-06-02	Crime Scene Camera]
EKCC 01-07-01	Institutional Tours and Group Visits of EKCC (Amended 6/14/23[2/09/23])
EKCC 01-07-03	Outside Consultation and Research (Amended 2/09/23[12/13/16])
[EKCC 01-10-02	Organization and Assignment of Responsibility
EKCC 01-10-03	Institutional Planning
EKCC 01-13-01	Organization of Operations Manual (Amended 8/13/02)
EKCC 01-13-02	Monitoring of Operations, Policies and Procedures
EKCC 01-13-03	Formulation and Revision of EKCC Operating Procedure (Amended 8/13/02)

EKCC 01-13-04	Meetings Conducted and Their Purpose]
EKCC 02-01-02	Inmate Canteen (Amended 2/09/23[12/13/16])
EKCC 02-02-01	Fiscal Management: Agency Funds (Amended 2/09/23[6/12/02])
[EKCC 02-05-01	Fiscal Management: Budget
EKCC 02-08-01	Property Inventory
EKCC 02-08-02	Warehouse Operation and Inventory Control
EKCC 02-08-03	Inventory Control, Nonexpendable Items
EKCC 02-08-04	Warehouse Policy and Procedure
EKCC 02-11-01	Purchase and Supply Requisition
EKCC 02-12-01	Fiscal Management: Audits]
EKCC 02-14-01	Screening Disbursements from Inmate Personal Accounts (Amended 2/09/23[6/12/02])
[EKCC 04-02-02	Advisory Training Committee]
EKCC 06-03-01	Case Record Management (Amended 2/09/23[12/13/16])
[EKCC 10-02-01	Special Management Unit: Operating Procedures and Living Conditions]
EKCC 10-02-04	Restrictive Housing Unit and Special Management Unit: Operating Procedures and Living Conditions (Added 2/09/23)
EKCC 11-02-01	Meal Planning (Amended 2/09/23[10/14/16])
EKCC 11-04-01	Food Service: Inspections and Sanitation (Amended 2/09/23)
EKCC 11-04-02	Medical Screening of Food Handlers (Amended 2/09/23)
EKCC 11-05-01	Food Service: Security (Amended 2/09/23[12/13/16])
EKCC 11-07-01	Dining Room Rules (Amended 2/09/23[12/13/16])
EKCC 12-01-01	Vermin and Insect Control (Amended 2/09/23)
EKCC 12-02-01	Inmate Dress and Use of Access Areas (Amended 2/09/23[10/14/16])
EKCC 13-01-01	Pharmacy Policy (Amended 2/09/23[12/13/16])
EKCC 13-01-02	Self-Administration of Medication (SAM) Program (Amended 2/09/23[12/13/16])
EKCC 13-02-03	Consultations (Amended 2/09/23[10/14/16])
EKCC 13-02-04	Medical Services (Amended 6/14/23[2/09/23][9/14/05])
EKCC 13-02-05	Health Evaluations (Amended 2/09/23[12/13/16])
EKCC 13-02-06	Sick Call, General, and Dental (Amended 2/09/23[9/14/05])
EKCC 13-05-01	HIV[Aids] and Hepatitis B: Precautions Against Infection (Amended 2/09/23[9/14/05])
EKCC 13-07-01	Serious Illness, Major Injuries, Death (Amended 2/09/23[9/14/05])
EKCC 13-08-01	Psychiatric and Psychological Services (Amended 6/14/23[2/09/23][12/13/16])
EKCC 13-08-02	Psychiatric and Psychological Services Team (Amended 6/14/23[2/09/23][10/14/16])
EKCC 13-08-03	Suicide Prevention and Intervention Program (Amended 6/14/23[2/09/23][12/13/16])
EKCC 13-08-04	Detoxification (Amended 2/09/23[10/14/16])
EKCC 13-08-05	Mental Health Services (Amended 6/14/23[2/09/23][Added 9/14/05])
EKCC 13-09-01	Dental Services (Amended 2/09/23[9/14/05])
EKCC 13-10-01	Optometric Services (Amended 2/09/23[9/14/05])
EKCC 13-12-02	Resident Transfer/Medical Profiles (Amended 2/09/23[9/14/05])
EKCC 13-13-01	Syringes, Needles and Sharps Control (Amended 2/09/23[9/14/05])
EKCC 13-15-01	Medical Department - General Housekeeping, Decontamination Procedures, and Biohazard Waste

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	Procedures (Amended 2/09/23[9/14/05])
EKCC 13-16-01	Medical Records (Amended 2/09/23[11/8/2005])
EKCC 14-02-01	Clothing, Bedding and Personal Hygiene Supplies: [Issuance and Replacement Schedule](Amended 2/09/23)
EKCC 14-03-01	Board of Claims (Added 2/09/23)
EKCC 14-04-01	Inmate Legal Services (Amended 2/09/23)
EKCC 14-05-01	Americans with Disabilities Act and Inmate Programs Access (Added 2/09/23)
EKCC 14-07-01	Inmate Rights and Responsibilities
EKCC 15-01-01	Hair and Grooming Standards: Inmate Barber Shop (Amended 2/09/23)
EKCC 16-01-01	Inmate Visiting (Amended 2/09/23)
EKCC 16-02-01	Inmate Correspondence (Amended 2/09/23)
EKCC 16-03-01	Inmate Telephone Procedures (Amended 2/09/23)
EKCC 16-05-01	Inmate Access to and Communication with EKCC Staff (Amended 2/09/23)
EKCC 16-05-02	Unit Bulletin Boards & Inmate TV Channel (Amended 2/09/23)
EKCC 17-01-02	Personal Property Control (Amended 2/09/23)
EKCC 17-02-01	Assessment and [f]Orientation (Amended 2/09/23)
EKCC 17-04-01	Inmate Reception Process (Amended 2/09/23)[at the EKCC]
EKCC 17-04-02	Provisional Assessment Center Operations and Reception Program (Added 2/09/23)
EKCC 18-01-01	Inmate Classification (Amended 2/09/23)
EKCC 18-02-01	Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) (Amended 2/09/23)
EKCC 18-10-01	Parole Progress Report
EKCC 18-13-01	Meritorious Housing (Amended 2/09/23)
EKCC 18-13-04	Minimum Security Unit: Operating Procedures and Living Conditions (Amended 2/09/23[Added 8/13/02])
EKCC 19-04-01	Inmate Work Program (Amended 2/09/23)
EKCC 20-01-01	Educational Courses (Amended 2/09/23)[Program]
EKCC 21-01-01	Library Services (Amended 2/09/23)
EKCC 22-02-01	Recreation and Inmate Activities (Amended 2/09/23)
EKCC 23-01-01	Religious Services (Amended 2/09/23)
EKCC 24-01-01	Social Services and Counseling Program (Amended 2/09/23)
EKCC 25-02-01	Inmate Discharge Procedure (Amended 2/09/23)
EKCC 25-03-01	Reentry[Pre-release] Preparation (Amended 2/09/23)

(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 Web site at <https://corrections.ky.gov/About/Pages/Ircfilings.aspx>.

COOKIE CREWS, COMMISSIONER

APPROVED BY AGENCY: June 5, 2023

FILED WITH LRC: June 14, 2023 at 11:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 21, 2023 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 April 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: 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 operation of the Eastern Kentucky Correctional Complex (EKCC).

(b) The necessity of this administrative regulation: This regulation meets statutory requirements in KRS 196.035 and 197.020 and 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 institutional 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 400 employees of the correctional intuition, 1,900 inmates, and all 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 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: An exact cost of implementation 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 of implementation is unknown, but it is not anticipated that the amendment to this administrative regulation will increase costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds budgeted 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: 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: The amendment does not create or increase 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 amendment to this administrative regulation impacts the operation of the Eastern 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 61.870-61.884, 196.035, 197.020, 197.025, 197.170, 439.510, 532.120

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? New programs are not created. 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 is not expected to increase costs.

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

Revenues (+/-):

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 anticipated.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Cost savings are not anticipated.

(c) How much will it cost the regulated entities for the first year? The regulation impacts how the institution operates, but does

not increase costs from what is budgeted for the biennium.

(d) How much will it cost the regulated entities for subsequent years? The regulation impacts how the institution operates, but an increase in costs is not anticipated.

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)]. A major economic impact is not anticipated.

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

703 KAR 5:270. Kentucky's Accountability System.

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455, 158.649, 160.346, 20 U.S.C. 6311

STATUTORY AUTHORITY: KRS 158.6453, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6453 requires the Kentucky Board of Education to create and implement a balanced statewide assessment program that measures the achievement of students, schools, and districts; complies with the federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq., or its successor; and ensures accountability. KRS 158.6455 requires the Kentucky Board of Education to create an accountability system to classify schools and districts, including a process for annual summative performance evaluations and goals for improvement. This administrative regulation establishes the statewide system of accountability, and meets requirements set forth in the federal Every Student Succeeds Act of 2015 at 20 U.S.C. 6311.

Section 1. Definitions. (1) "English learner progress indicator" means the combination of individual student growth for status and the difference in school performance for change of English learners toward English language proficiency. For all other indicators, English learners means students currently identified and those who continue to be monitored as English learners.

(2) "Full academic year" means 100 or more instructional days of student enrollment within the school year.

(3) "Grade 12 non-graduates" means all students enrolled in grade 12 at the end of the school year who do not graduate.

(4) "Graduation rate" means the percentage of students who enter high school and receive a diploma based on their cohort in four (4) and five (5) years, adjusting for transfers in and out, émigrés, and deceased students.

(5) "Indicator performance rating" means one (1) of five (5) ~~color~~~~colored~~-coded performance levels on each state indicator that is determined by combining status and change.

(6) "Individual education program" or "IEP" means an individual education program as defined in 707 KAR 1:002.

(7) "Local education agency" or "LEA" for the purposes of this administrative regulation shall mean a local school district as provided in KRS ~~160.010~~~~[161.040]~~ and KRS ~~160.020~~~~[161.020]~~ or a charter school board of directors as provided in KRS ~~160.1590~~~~[161.1590]~~.

(8) "Overall performance rating" means one (1) of five (5) color-coded performance levels that aggregates all available state indicator data that is determined by combining status and change.

(9) "Postsecondary readiness" means the attainment of the necessary knowledge, skills, and dispositions to successfully

transition to the next level.

(10) "Proficient" or "proficiency" means reaching the desired level of knowledge and skills as measured on academic assessments.

(11) "Quality of school climate and safety indicator" means the measures of school environment.

(12) "State assessment results for reading and mathematics indicator" means the measure of academic performance for reading and mathematics on state assessments.

(13) "State assessment results for science, social studies, and writing indicator" means the measure of academic performance for science, social studies, and writing on state assessments.

(14) "State indicator" means a component of the accountability system as defined in KRS 158.6455.

(15) "Value table" means a set of numbers that are used to attribute scores to different performance levels.

(16) "Writing" means the content area that includes on-demand writing, and editing and mechanics.

Section 2. Kentucky's accountability system that is used to classify schools and LEAs shall include the state indicators of: state assessment results for reading and mathematics; state assessment results for science, social studies, and writing; English learner progress; postsecondary readiness; quality of school climate and safety; and graduation rate.

(1) The state assessment results for reading and mathematics indicator shall be measured by student performance on state assessments in reading and mathematics.

(2) The state assessment results for science, social studies, and writing indicator shall be measured by student performance on state assessments in science, social studies, and writing.

(3) The English learner progress indicator shall be measured by student performance on an English proficiency test. The English learner progress indicator shall be measured based on a growth value table. Additional tables shall incorporate the federal flexibilities of age upon entry to U.S. schools, initial English language proficiency level, and degree of interrupted schooling.

(4) The quality of school climate and safety indicator shall include perception data from surveys that measure insight to the school environment.

(5) The postsecondary readiness indicator shall be measured at high school for students meeting the following criteria:

(a) Earn a regular or alternative high school diploma plus grade 12 non-graduates; and

(b) Achieve academic readiness or career readiness.

1. A school shall receive credit for each student demonstrating academic readiness by:

a. Scoring at or above the benchmark score as determined by the Council on Postsecondary Education (CPE) on the college admissions examination or college placement examination; ~~or~~

b. Completing a minimum of three (3) hours of credit in one (1)[two–(2)] Kentucky Department of Education approved dual credit course[courses] and receiving a grade of C or higher ~~in each course~~; ~~or~~

c. Completing one (1)[two–(2)] advanced placement (AP) course[courses] and receiving a score of three (3) or higher on the[each] AP assessment; ~~or~~

d. Receiving a score of five (5) or higher on one (1)[two–(2)] examination[examinations] for an international baccalaureate course[courses]; ~~or~~

e. Scoring at or above the benchmark on one (1)[two–(2)] Cambridge Advanced International examination[examinations]; ~~or~~

f. ~~Completing a combination of academic readiness indicators listed above.~~

g. ~~Demonstration of academic readiness listed in paragraph 5(b) 4 of this section shall include successful completion of one (1) quantitative reasoning or natural sciences course and one (1) written or oral communication course; or visual and performing arts course; or humanities course; or social and behavioral sciences learning outcomes course.]~~

2. A school shall receive credit for each student demonstrating career readiness by:

a. Scoring at or above the benchmark on industry certifications

as approved by the Kentucky Workforce Innovation Board on an annual basis; ~~or~~

b. Qualifying for three (3) or more hours of postsecondary articulated credit associated with a statewide articulation agreement; [Scoring at or above the benchmark on the career and technical education end-of-program assessment for articulated credit; or]

c. Completing a minimum of three (3) hours of credit in one (1)[two–(2)] Kentucky Department of Education approved CTE dual credit course[courses], and receiving a grade of C or higher ~~in each course~~; ~~or~~

d. Completing a Kentucky Department of Education approved or labor cabinet-approved apprenticeship; ~~or~~;

e. Successfully completing a Kentucky Board of Education approved cooperative or internship [course] that is aligned with a credential or associate degree and which provides a minimum of 300 hours of on-the-job work experience [during days that school is in session within the district-approved regular school year].

3. Students participating in the alternate assessment program shall meet criteria based on academic or career alternate assessment requirements.

(6) The graduation rate indicator shall be measured for each high school using the four (4)-year and extended five (5)-year cohort rate. The graduation rate shall be reported for all students and student groups.

Section 3. Classification of Schools and LEAs in the State Accountability System. (1) Data shall be included in the overall performance rating for schools and LEAs for the following state indicators:

(a) State Assessment Results (reading and mathematics);
(b) State Assessment Results (science, social studies, and writing);

(c) English learner progress;

(d) Postsecondary readiness (high school);

(e) Quality of school climate and safety; and

(f) Graduation rate (high school).

(2) Data from individual student performance on state assessments administered as required in KRS 158.6451 and KRS 158.6453 shall be included in the overall performance rating of each school and LEA. This data shall include students with disabilities with IEPs who participate in the alternate assessment program.

(3) Data in the overall performance rating shall be attributed to grade level spans for schools and LEAs[LEA] as established in this subsection.

(a) Elementary schools shall include data from: state assessment results for reading and mathematics; state assessment results for science, social studies, and writing; English learner progress; and quality of school climate and safety.

(b) Middle schools shall include data from: state assessment results for reading and mathematics; state assessment results for science, social studies, and writing; English learner progress; and quality of school climate and safety.

(c) High schools shall include data from: state assessment results for reading and mathematics; state assessment results for science, social studies, and writing; English learner progress; postsecondary readiness; graduation rate; and quality of school climate and safety.

(d) LEAs shall include data from: school state assessment results for reading and mathematics; state assessment results for science, social studies, and writing; English learner progress; postsecondary readiness; graduation rate; and quality of school climate and safety.

Section 4. Calculations for Reporting Categories.

(1)(a) State assessment results for reading and mathematics shall be rated equally in elementary, middle, and high schools and LEAs by awarding points as described in subsection (2)(b)[paragraph 2(b)] of this section.

(b) State assessment results for science, social studies, and writing shall be rated equally in elementary, middle and high

schools, and in LEAs by awarding points as described in **subsection (2)(b)(paragraph 2(b))** of this section.

(2)(a) For any content area (reading, mathematics, science, social studies, and writing) where data are not available, the data of the remaining content areas shall be redistributed proportionally across state assessment results state indicators.

(b) The following value table shall be used to calculate the points for state assessment results in reading and mathematics and state assessment results in science, social studies, and writing:

Proficiency Levels	Points Awarded for Each Percent of Students
Novice	0
Apprentice	.5
Proficient	1
Distinguished	1.25

(3) Progress toward achieving English proficiency by English learners shall be calculated as follows:

(a) Individual growth shall be compared to prior year performance on an English proficiency exam.

(b) The exit benchmark and English learner growth value tables created involving Kentucky educators and advised by technical experts shall be utilized.

(c) Points for each English learner based on the English learner growth value table shall be averaged.

(d) The value tables shall be included in the Every Student Succeeds Act Consolidated State Plan and negotiated with the United States Department of Education.

(e) Kentucky shall modify the value table and its use to reflect factors that may impact English learners' progress toward language proficiency, including age upon entry to U.S. schools, initial English language proficiency level, and degree of interrupted schooling.

(4) The quality of school climate and safety indicator shall be rated for elementary, middle, and high schools, and LEAs as established in this subsection. The Kentucky Board of Education shall approve the measures of quality of school climate and safety. Data collected for individual students shall be aggregated to calculate school and district level scores for climate, safety, and overall climate and safety indicator.

(5) Postsecondary readiness shall be calculated by dividing the number of high school graduates plus grade 12 non-graduates who have met measures of postsecondary readiness by the total number of graduates plus grade 12 non-graduates. Credit for students obtaining an industry-recognized certification, licensure, or credential in specialized career pathways in state and regional high demand sectors as approved by Kentucky's Workforce Innovation Board is one and one-quarter (1.25) points. Credit for students obtaining all other readiness indicators is one **(1)(4.0)** point.

(6) Graduation rate is the percentage of students completing the requirements for a Kentucky high school diploma compared to the cohort of students beginning in grade 9. The accountability system shall include a four (4) year cohort rate and an extended five (5) year cohort rate. Each rate shall be weighted equally.

(7) The indicator performance rating shall be assigned as follows:

(a) Indicators identified in Section 3 shall have a rating of very low, low, medium, high, or very high by school and LEA for status.

(b) Indicators identified in Section 3 shall have a rating of declined significantly, declined, maintained, increased, or increased significantly by school and LEA for change.

(c) Each state indicator combines status and change and reports an indicator performance level using a color-coded table.

(8) The indicators for each school and LEA as identified in Section 3 of this administrative regulation shall contribute to the overall performance rating of schools and LEAs.

(9) A standard setting process shall be conducted involving Kentucky educators and advised by technical experts to recommend very low to very high performance levels for status and declined significantly to increased significantly for change on each indicator including state assessment results for reading and mathematics, state assessment results for science, social studies,

and writing, English learner progress, postsecondary readiness, graduation rate, and quality of school climate and safety.

(10)(a) An overall performance rating for elementary, middle, and high schools shall be reported using a color rating system to communicate performance of schools, with red being the lowest rating and blue being the highest rating. Color ratings shall include five (5) performance levels from highest to lowest: Blue, Green, Yellow, Orange, and Red. Performance of schools, LEAs, and state shall be reported by level (elementary, middle, and high) as applicable. The School Report Card shall display the color ratings earned for each school, LEA, and state (by level).

Overall Accountability Weights						
	State Assessment Results (Reading and Mathematics)	State Assessment Results (Science, Social Studies, and Writing)	English learner progress	Quality of School Climate and Safety	Postsecondary Readiness	Graduation Rate(4 and 5 year cohort)
Elementary Schools	51	40	5	4	--	---
Middle Schools	46	45	5	4		
High Schools	45	20	5	4	20	6

(b) The performance on state indicators is combined using the amounts in the Overall Accountability Weights table to generate an overall performance.

(c) As a result of the standard setting process, the committee shall recommend the procedures for determining indicator and overall performance ratings, combining status and change and reflecting the indicator weights. The recommendation from the standards setting committee shall be approved as defined in KRS 158.6455.

(d) Kentucky shall identify schools to determine required federal designations as defined in KRS 160.346 based on the overall performance of the accountability system.

(e) If data cannot be calculated for an indicator, the weights shall be redistributed proportionally to remaining state indicators that shall be reported for the school or LEA.

(11) School accountability indicators shall be assigned as follows:

(a) Students enrolled for a full academic year shall be included in the calculations for state assessment results for reading and mathematics, state assessment results for science, social studies, and writing, English learner progress, quality of school climate and safety, and postsecondary readiness for a school and LEA.

(b) Graduation rate calculations shall be based on the students' final enrollment.

(c) Student demographic groups shall have a minimum of thirty (30) students to be included in school rating calculations.

(d) In accordance with KRS 158.6455, schools and districts shall be placed into one (1) of five (5) color ratings established by a standards-setting process utilizing results from the first operational administration of assessments. The process shall:

1. Be advised by the Kentucky Department of Education Technical Advisory Panel; the School Curriculum, Assessment and Accountability Council; Local Superintendent Advisory Council, and the Office of Education Accountability; and

2. Use accepted technical procedures and involve Kentucky school and district administrators and teachers.

Section 5. Additional Public Reporting Requirements. (1) The Kentucky Department of Education shall report disaggregated data for each state indicator of the state assessment and accountability system.

(2) Progress on long-term and interim goals shall be reported publicly as required by the federal Every Student Succeeds Act and submitted in Kentucky's Consolidated State Plan. Goals shall be developed for every student group, including all students, for academic achievement in each content area of reading, mathematics, science, social studies, and writing; graduation rate based on four (4) year and five (5) year adjusted cohorts; and progress on English proficiency for English learners.

(3) The goal for academic achievement operationalizes both the improvement of proficient and distinguished performance for all students and each student group and the reduction of achievement gaps as defined in KRS 158.649. Each student group of ten (10) or more students shall be reported on the School Report Card. The data shall be suppressed as necessary for reporting to meet the Family Educational Rights and Privacy Act (FERPA).

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

JASON GLASS, Ed.D., Commissioner

LU S. YOUNG, Ed.D., Chairperson

APPROVED BY AGENCY: June 13, 2023

FILED WITH LRC: June 14, 2023 at 12:35 p.m.

CONTACT PERSON: Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes state accountability requirements for Kentucky's public local education agencies (LEAs) and schools.

(b) The necessity of this administrative regulation: KRS 158.6453 requires the Kentucky Board of Education to create and implement a balanced statewide assessment program that measures the achievement of students, schools and districts, complies with the federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq., or its successor, and ensures accountability. KRS 158.6455 requires the Kentucky Board of Education (KBE) to create an accountability system to classify schools and districts, including a process for annual summative performance evaluations and goals for improvement.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides specific details for establishing the indicators and measures of the state-required accountability system for Kentucky public LEAs and schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specific details for establishing the statewide accountability program that rates LEAs and schools based on performance of multiple indicators: state assessment results (reading and mathematics), state assessment results (science, social studies and writing), English learner progress, graduation rate (high school only), postsecondary readiness (high school only) and quality of school climate and safety. The multiple indicators incorporate the student test results and school quality measures. The regulation complies with state statute and the federal Every Student Succeeds Act of 2015 (ESSA), 20 U.S.C. secs. 6301 et seq., or its successor, and ensures accountability.

(2) If 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 establishes state accountability requirements for Kentucky's public local education agencies (LEAs) and schools. One indicator in the accountability system is Postsecondary Readiness. The regulation includes a variety of options students may use to demonstrate postsecondary readiness. Currently, many of the options students may use to demonstrate postsecondary readiness require meeting benchmarks in two learning outcomes, courses and/ or exams. The amendment to this regulation reduces the number of measures required for students to demonstrate postsecondary readiness to one measure and will add cooperative and internship measures to the system due to the passage of Senate Bill (SB) 59 (2022). Senate Bill 25 (2023) also changes work-based learning to indicate that apprenticeship, internship, or cooperative are not limited to being offered as a high school course or during the regular school day, week or year.

(b) The necessity of the amendment to this administrative regulation: Due to the changes to the statute in the recently passed legislation, Senate Bill 59 (2022) and Senate Bill 25 (2023), it is necessary to amend the accountability regulation to align with state statute.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation amendment reduces the number of measures required for students to demonstrate postsecondary readiness from two to one, as mandated in SB 59 (2022) changes work-based learning to indicate that apprenticeship, internship, or cooperative are not limited to being offered as a high school course or during the regular school day, week or year, as mandated by Senate Bill 25 (2023).

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation amendment aligns details in the regulation to statute language in SB 59 (2022) and SB 25 (2023).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public LEAs and schools in Kentucky with schools grade 3 or higher and supporting staff in the Kentucky Department of Education (KDE).

(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 amendment, based on changes mandated in SB 59 (2022), reduces the number of measures required by students to demonstrate postsecondary readiness in Kentucky's accountability system from two to one, and provides a new measure of work-based learning as an additional choice on the menu of options for demonstrating career readiness. Language in SB 25 (2023) changes work-based learning to indicate that apprenticeship, internship, or cooperative are not limited to being offered as a high school course or during the regular school day, week or year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This change to the accountability system requires no additional direct costs to the KDE, LEAs or schools.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation amendment provides an additional option for students to demonstrate career readiness in Kentucky's accountability system that is of equal rigor to other existing options. Both career and technical education (CTE) pathway students and non-CTE students will be able to pursue career readiness through a work-based learning route with options for apprenticeships, internships, or cooperatives that are not limited to being offered as a high school course or during the regular school day, week or year.

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

(a) Initially: The amendment to the accountability system will require no additional cost to the KDE.

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(b) On a continuing basis: Kentucky's accountability system is required by federal and state legislation and is implemented using state and federal funds.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general and federal 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 increased fees or funding are anticipated as a result of this regulation amendment.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and LEAs.

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? Public Local Education Agencies (LEAs) and schools.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.6453; KRS 158.6455; 20 U.S.C. secs. 6301 et seq.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? The accountability system requires no additional cost to the LEAs and schools.

(d) How much will it cost to administer this program for subsequent years? Kentucky's accountability system is required by federal and state legislation and is implemented using state and federal funds.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The accountability system regulation will not generate cost savings to the LEAs and schools.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The accountability system regulation will not generate cost savings to the LEAs and schools.

(c) How much will it cost the regulated entities for the first year? The accountability system requires no additional cost to the LEAs and schools.

(d) How much will it cost the regulated entities for subsequent years? The accountability system requires no additional cost to the LEAs and schools.

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

Cost Savings (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] The administrative regulation is not anticipated to have major economic impact on state or local government or regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. Every Student Succeeds Act of 2015 (ESSA), 20 U.S.C. secs. 6301 et seq.

(2) State compliance standards. KRS 158.6453, KRS 158.6455 and 703 KAR 5:270

(3) Minimum or uniform standards contained in the federal mandate. ESSA requires accountability systems to use multiple measures of school success, including academic outcomes, student progress, and school quality.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This regulation amendment will not impose stricter requirements or additional responsibilities than those required federally.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

PROPOSED AMENDMENTS

Public comment periods for ordinary, non-emergency regulations are at least two months long. For other regulations with open comment periods, please also see last month's [Administrative Register of Kentucky](#).

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

11 KAR 5:001. Definitions pertaining to 11 KAR Chapter 5.

RELATES TO: KRS 164.740-164.785

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.7891. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. This administrative regulation defines terms used in 11 KAR Chapter 5 pertaining to the Kentucky Tuition Grant Program and the College Access Program.

Section 1. Definitions.

(1) "Academic term" means the fall or spring semester or their equivalence under a trimester or quarter system at a postsecondary education institution.

(2) "Academic year" means a period of time, usually eight (8) or nine (9) months, during which a full-time student would normally be expected to complete the equivalent of two (2) semesters, two (2) trimesters, three (3) quarters, 900 clock hours, twenty-four (24) semester hours, or thirty-six (36) quarter hours of instruction.

(3) "Authority" is defined by KRS 164.740(1).

(4) "College Access Program" or "CAP" means the program of student financial assistance grants authorized under KRS 164.7535 to assist financially needy part-time and full-time undergraduate students attending an educational institution.

(5) "Correspondence course" means a home study course that:

(a) Is provided by an educational institution under which the institution provides instructional materials, including examinations on the materials, to students who are not physically attending classes at the institution; and

(b) Meets the following requirements:

1. When a student completes a portion of the instructional materials, the student takes the examinations that relate to that portion of the materials, and returns the examinations to the institution for grading;

2. The institution provides instruction through the use of video cassettes or video discs in an academic year, unless the institution also delivers the instruction on the cassette or disc to students physically attending classes at an institution during the same academic year; and

3. If a course is part correspondence and part residential training, the course shall be considered to be a correspondence course.

(6) "Educational expenses" means tuition and fees, books and supplies, room and board or reasonable living expenses, reasonable miscellaneous personal expenses, and reasonable transportation costs for the academic period of the grant application.

(7) "Educational institution" means a participating institution located in Kentucky which:

(a) Offers an eligible program of study;

(b) As a condition of enrollment as a regular student, requires that the person:

1. Have a certificate of graduation from a school providing secondary education, or the equivalent of a certificate; or

2. a. Be beyond the age of compulsory attendance in Kentucky; and

b. Have the ability to benefit from the training offered by the institution;

(c) Either:

1. Has its headquarters or main campus in Kentucky; or

2. If based outside of Kentucky, offers no more than forty-nine (49) percent of the courses offered in Kentucky as online courses; and

(d) 1. For purposes of the College Access Program, is a public or private participating institution; or

2. For purposes of the Kentucky Tuition Grant Program, is a private independent college or university, accredited by a regional accrediting association recognized by the United States Department of Education, that is a participating institution whose institutional programs are not comprised solely of sectarian instruction.

(8) "Eligible institution" is defined by KRS 164.740(4).

(9) "Eligible noncitizen" means an individual who is:

(a) Either:

1. A U.S. national;

2. A U.S. permanent resident with an Alien Registration Receipt Card (I-151 or I-551); or

3. A person with a Departure Record (I-94) from the U.S. Immigration and Naturalization Service showing any one (1) of the following designations:

a. "Refugee";

b. "Asylum granted";

c. "Indefinite parole" or "humanitarian parole"; or

d. "Cuban-Haitian entrant"; or

4. A citizen of:

a. The Freely Associated States;

b. The Federated States of Micronesia;

c. The Republic of Palau; or

d. The Republic of the Marshall Islands; and

(b) Not in the United States on a:

1. F1 or F2 student visa;

2. J1 or J2 exchange visa;

3. G series visa;[-or]

4. Deferred Action for Childhood Arrivals (DACA) status.

(10) "Eligible program of study" means an undergraduate program, of a least two (2) academic years' duration, offered by an educational institution which:

(a) For purposes of the KTG or CAP Grant Programs, leads to a degree; or

(b) For purposes of only the CAP Grant Program:

1. Leads to a certificate or diploma while attending a publicly operated vocational-technical institution; [or]

2. Is designated as an equivalent undergraduate program of study by the Council on Postsecondary Education; or [-]

3. Is a comprehensive transition and postsecondary program as defined in KRS 164.740(3).

(11) "Expected family contribution" means the amount that a student and his family are expected to contribute toward the cost of the student's education determined by applying the federal methodology established in 20 U.S.C. 1087kk through 1087vv to the information that the student and his family provided on the application.

(12) "Federal act" is defined by KRS 164.740(8) and means 20 U.S.C. 1001 through 1146a.

(13) "Full-time student" means an enrolled student who is carrying a full-time academic workload:

(a) That may include any combination of courses, work, research, or special studies that the institution considers sufficient to classify the student as a full-time student, except that correspondence courses shall not be counted in determining the student's full-time status; and

(b) As determined by the institution under a standard applicable to all students enrolled in a particular educational program, except that for an undergraduate student, an institution's minimum standard shall equal or exceed one (1) of the following minimum requirements:

1. Twelve (12) semester hours or eighteen (18) quarter hours per academic term in an educational program using a semester, trimester, or quarter system;

2. Twenty-four (24) semester hours or thirty-six (36) quarter hours per academic year for an educational program using credit hours, but not using a semester, trimester, or quarter system, or the prorated equivalent for a program of less than one (1) academic year;

3. Twenty-four (24) clock hours per week for an educational program using clock hours;

4. In an educational program using both credit and clock hours, any combination of credit and clock hours if the sum of the following fractions is equal to or greater than one (1):

a. For a program using a semester, trimester, or quarter system, the number of credit hours per term divided by twelve (12) and the number of clock hours per week divided by twenty-four (24); or

b. For a program not using a semester, trimester, or quarter system, the number of semester or trimester hours per academic year divided by twenty-four (24), the number of quarter hours per academic year divided by thirty-six (36), and the number of clock hours per week divided by twenty-four (24);

5. A series of courses or seminars that equals twelve (12) semester hours or twenty-four (24) quarter hours in a maximum of eighteen (18) weeks; or

6. The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic workload of a full-time student.

(14) "Grant" is defined by KRS 164.740(9).

(15) "Kentucky Tuition Grant" or "KTG" means the program of student financial assistance grants authorized by KRS 164.780 and 164.785 for residents of Kentucky who bear the major costs of attending an educational institution and who demonstrate financial need.

(16) "KHEAA grant" means an award of a student financial assistance grant under the College Access Program or the Kentucky Tuition Grant Program or a combination of the two (2).

(17) "KHEAA grant limit" means an aggregate limitation on KHEAA grant awards:

(a) That are made to an individual for all academic years of the eligible program of study in which the student receives a KHEAA grant (including any KHEAA grant limit previously used in a different eligible program of study or at a different educational institution); and

(b) That shall be:

1. Measured in terms of the applicable percentage of the maximum KHEAA grant that would have been disbursed for the academic year to a full-time student and not fully refunded;

2. Depleted each academic term by subtracting, from the applicable percentage, the percentage used for the academic term, derived by dividing the net amount of KHEAA grant disbursed for the academic term by the maximum KHEAA grant award for the academic year that would have been disbursed to a full-time student, using the then current maximum KHEAA grant; and

3. Based upon the following applicable percentages representing the aggregate limitation of KHEAA grant awards:

a. 200 percent for a student enrolled in a two (2) year eligible program of study; or

b. 400 percent for a student enrolled in a four (4) year eligible program of study.

(18) "KHEAA grant program officer" or "KGPO" means the official designated on the administrative agreement, pursuant to KRS 164.748(6), to serve as the educational institution's on-campus agent to certify all institutional transactions and activities with respect to the authority's grant programs.

(19) "On-ground course" means a course that meets the following criteria:

(a) Instruction is delivered face-to-face, typically in a lecture-style format, in a setting in which the student and the instructor are in the same physical location on the educational institution's campus; and

(b) Is not an online course.

(20) "Online course" means a course for which any portion of

the instruction is transmitted electronically over telecommunication lines or the Internet.

(21) "Overaward" means receipt of financial assistance from all sources in excess of a student's need determined in accordance with 11 KAR 5:130 through 5:145.

(22) "Participating institution" is defined in KRS 164.740(14).

(23) "Part-time student" means an enrolled student who is carrying an academic workload:

(a) That may include any combination of courses, work, research, or special studies that the institution considers sufficient to classify the student as at least a half-time student, except that correspondence courses shall not be counted in determining the student's part-time status; and

(b) As determined by the institution under a standard applicable to all students enrolled in a particular educational program, except that for an undergraduate student, an institution's minimum standard shall equal or exceed one (1) of the following minimum requirements:

1. At least six (6) semester hours per semester;

2. Six (6) quarter hours per quarter; or

3. Half of the academic workload of a full-time student as determined by the educational institution.

(24) "Pell Grant" means an award under the federal Pell Grant Program operated by the secretary under the provisions of 20 U.S.C. 1070a.

(25) "Resident of Kentucky" or "resident" means a person who is determined by the participating institution to be a resident of Kentucky in accordance with the criteria established in 13 KAR 2:045.

(26) "Total cost of education" means an amount determined for an academic year for each applicant by the following formula: normal tuition and fees charged by the institution chosen by the applicant, plus maximum board contract amount, plus minimum room contract amount.

CATHE DYKSTRA, Chair

APPROVED BY AGENCY: May 25, 2023

FILED WITH LRC: June 13, 2023 at 12:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 29, 2023, at 10:00 a.m. Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023. 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: Miles F. Justice, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, Fax: (502) 696-7309, mjustice@kheaa.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Rebecca Gilpatrick

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines terms used in the administration of the College Access Program and Kentucky Tuition Grant programs.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to comply with KRS 164.753(4), which requires the Authority to promulgate administrative regulations pertaining to grants.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by ensuring that those terms applicable to the KHEAA-administered grant programs are referenced accurately.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by defining those terms pertinent to the KHEAA-administered grant 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 will change the existing administrative regulation by adding comprehensive transition and postsecondary programs to eligibility for CAP grant awards for individuals with intellectual disabilities.

(b) The necessity of the amendment to this administrative regulation: This amendment to the administrative regulation is necessary in order to bring the regulation into alignment with KRS 164.7535, the College Access Program Grant statute.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by ensuring that all postsecondary programs identified as eligible under the CAP grant program are specified within the regulation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by ensuring that the list of CAP-eligible programs included in the regulation is complete and accurate.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: For the 2022-23 academic year, CAP offers were made to 85,800 students. To date, awards have been received by 53,000 students.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: In order to comply with this amendment, potential award recipients will continue to be required to complete the Free Application for Federal Student Aid (FAFSA) and satisfy the eligibility criteria set forth in the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to potential award recipients in order to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with this amendment, potential award recipients, including those enrolled in comprehensive transition and postsecondary programs will be considered for CAP grant awards.

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

(a) Initially: There will be no cost to implement this amended administrative regulation.

(b) On a continuing basis: Same as (5)(a) above.

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

Grants to students under the College Access Program are funded from net lottery revenues transferred to the authority for grant and scholarship programs along with general funds to help defray cost of administration of the programs.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The administrative regulation does not establish any fees, nor does this administrative regulation directly or indirectly increase any fees.

(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 fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

FISCAL NOTE

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.748(4), KRS 164.753(4).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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 regulated entities - applicants for KHEAA grant awards - will incur no cost savings as a result of this regulation during the first full year in which this administrative regulation is in effect since there are no costs incurred by those regulated entities.

b. How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Same as 4a above.

c. How much will it cost the regulated entities for the first year? The regulated entities - applicants for KHEAA grant awards - will incur no costs for the first year in which this administrative regulation is in effect.

d. How much will it cost the regulated entities for subsequent years? Same as 4c above.

Note: If specific dollar estimates cannot be determined, provide

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

5. Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. This administrative regulation will not have a major economic impact on the Authority or regulated entities.

**KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)**

**11 KAR 15:040. Kentucky Educational Excellence
Scholarship award determination procedure.**

RELATES TO: KRS 164.7881(4)

STATUTORY AUTHORITY: KRS 164.748(4), 164.7881(4)(b), 164.7885(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.7885(7) authorizes the authority to promulgate administrative regulations for the administration of the Commonwealth Merit Scholarship Program, renamed Kentucky Educational Excellence Scholarship (KEES) Program by EO 98-1592. KRS 164.7881(4)(b) requires the authority to promulgate an administrative regulation to proportionately reduce the maximum award amount for an eligible student enrolled part-time[part-time]. This administrative regulation establishes the conditions for KEES eligibility for eligible students enrolled on a part-time basis.

Section 1. Reduction for Part-time Study.

(1) If an eligible student is enrolled as a part-time student for an academic term, the maximum award amount to which the student is entitled shall be one-half of the maximum annual award prorated as follows:

- (a) Fifty (50) percent if enrolled for six (6) semester hours;
- (b) Fifty-eight (58) percent if enrolled for seven (7) semester hours;
- (c) Sixty-seven (67) percent if enrolled for eight (8) semester hours;
- (d) Seventy-five (75) percent if enrolled for nine (9) semester hours;
- (e) Eighty-three (83) percent if enrolled for ten (10) semester hours;
- (f) Ninety-two (92) percent if enrolled for eleven (11) semester hours; and
- (g) 100 percent if enrolled for twelve (12) semester hours or more.

(2) For a quarter hour institution, in order to determine the maximum award amount to which the student is entitled, the number of quarter hours of the student's enrollment shall be converted to semester hours on either a semester or academic year basis as follows:

(a) Quarter to semester hour conversion per semester for periods July 1 - December 31 and January 1 – June 30

Quarter Hours	Semester Hours	Award Percentage
18	12	100
16	11	92
14	10	83
13	9	75
12	8	67
10	7	58
8	6	50

6	4	0
4	3	0
2	2	0

(b) Quarter to semester hour conversion per academic year for periods July 1 – June 30

Quarter Hours	Semester Hours	Award Percentage
36	24	100
32	22	92
28	20	83
24	16	67
20	14	58
16	12	50
12	8	0
8	6	0
4	4	0

(3) The equivalent academic unit of measurement shall be used to correspond to a semester hour, if the participating institution does not use semester hours.

(4) A participating institution shall determine full-time and less than full-time enrollment status for purposes of subsection (1) of this section in the same manner as the participating institution uses to determine enrollment status for Pell Grant eligibility.

CATHE DYKSTRA, Chair

APPROVED BY AGENCY: March 9, 2023

FILED WITH LRC: June 13, 2023 at 12:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 29, 2023, at 10:00 a.m. Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023. 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: Miles F. Justice, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7309, fax (502) 696-7293, email mjustice@kheaa.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Rebecca Gilpatrick

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the conditions for KEES eligibility for students enrolled on a part-time basis.

(b) The necessity of this administrative regulation: KRS 164.7881(4)(b) requires KHEAA to promulgate an administrative regulation to proportionally reduce the maximum KEES award amount for an eligible student enrolled on a less than full-time basis. This administrative regulation is necessary in order to establish this reduction scheme.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by establishing a procedure for the proportional reduction of KEES awards for students enrolled on a part-time basis as required by KRS 164.7881(4)(b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing a procedure for the proportional

reduction of KEES awards for students enrolled on a part-time basis as 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 will clarify that, during any academic term comprised of part-time attendance, the prorated award will be based on one-half of the maximum annual KEES award earned by the recipient.

(b) The necessity of the amendment to this administrative regulation: This amendment to the administrative regulation is necessary in order to clearly state on what amount the prorated award provided in the regulation will be based.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by further clarifying the amount on which a prorated KEES award is to be based.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes by more fully informing stake holders as to the amount on which a prorated KEES award for part-time attendance will be based.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Individuals who have earned KEES awards and are attending a post-secondary institution on a part-time basis are 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 action is required of KEES recipients in order to comply with this amendment to the administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to KEES recipients in order to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No action is required of KEES recipients in order to receive a prorated award based on the maximum amount specified in the amendment. Rather, any student who is enrolled on a part-time basis and has earned a KEES award will receive a prorated award without having to take any action.

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

(a) Initially: The will be no cost to implement this amended administrative regulation.

(b) On a continuing basis: Same as (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The KEES program is funded through net lottery revenues transferred in accordance with KRS 154A.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The administrative regulation does not establish any fees nor does it increase any fees.

(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 fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any

person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.7874, 164.7877(3), 164.7879(1), (2), (3), 164.7881(4)(a), (c), (6), 164.7884.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 not generate any revenue.

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(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 regulated entities - KEES award recipients - will incur no cost savings as a result of this regulation during the first full year in which this administrative regulation is in effect since there are no costs incurred by those regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Same as 4a above.

(c) How much will it cost the regulated entities for the first year? The regulated entities - KEES award recipients - will incur no costs for the first year in which this administrative regulation is in effect.

(d) How much will it cost the regulated entities for subsequent years? Same as 4c above.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation will not have a major economic impact on the Authority or regulated entities.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

11 KAR 15:110. Scholarships for Registered Apprenticeship and Qualified Workforce Training programs.

RELATES TO: KRS 164.7871-164.7885

STATUTORY AUTHORITY: KRS 164.744(2), 164.748(4), 164.753(3), 164.7884, 164.7894

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.7884(5) requires the authority to promulgate administrative regulations establishing the procedures for making awards to KEES-eligible students participating in a registered apprenticeship or qualified workforce training program.

Section 1. Eligibility.

(1) A student who has earned a KEES award and who is enrolled in a registered apprenticeship program is eligible to request reimbursement for post-secondary expenses beginning with the 2018-2019 academic year.

(2) A student who has earned a KEES award and who is enrolled in a qualified workforce training program is eligible to request reimbursement for post-secondary expenses for the academic year beginning July 1, 2020.

(3) Reimbursement shall be made only for approved expenses as provided in KRS 164.7884(3)(a).

Section 2. Election Process.

(1) By August 1 prior to the start of the academic year, a student enrolled in a registered apprenticeship or qualified workforce training program shall submit to KHEAA their funding pathway choice, either traditional or reimbursement, for postsecondary KEES use.

(2) If a student chooses the traditional KEES funding pathway, funds shall be paid to the student's postsecondary institution upon KHEAA's receipt of enrollment verification from the institution. Funds shall not be paid directly to the student by KHEAA.

(3) If a student chooses the registered apprenticeship or qualified workforce training reimbursement pathway, funds shall be paid directly to the student upon KHEAA's receipt of both a reimbursement request and proof of purchase by the student.

(4) Any student who fails to make an election by August 1 shall automatically be placed in the traditional KEES funding pathway.

Section 3. Reimbursement Process.

(1) Upon receipt of a student's election to participate in the registered apprenticeship or qualified workforce training reimbursement pathway, KHEAA shall provide written confirmation to the student detailing the reimbursement process.

(2) In order to be eligible for reimbursement, the student must:

(a) Purchase items required for participation in the registered apprenticeship or qualified workforce training program;

(b) Complete and submit to KHEAA a reimbursement request; and

(c) Submit to KHEAA supporting documentation, including an itemized dated receipt.

(3) Upon receipt of the required documentation and approval of the reimbursement request, KHEAA shall provide reimbursement of the approved expenses directly to the student in the form of a paper check.

(4) In addition to reimbursable purchases, a student may request a travel allowance of up to \$250 per semester to cover commuting costs incurred during participation in the registered apprenticeship or qualified workforce training program.

(5) The total reimbursement amount per year shall not exceed the student's KEES award maximum.

(6) Eligibility for reimbursement ends the earlier of:

(a) Five (5) years following the student's date of high school graduation or GED receipt;

(b) The student's successful completion of a registered apprenticeship or qualified workforce training program; or

(c) Receipt of reimbursement for four (4) academic years.

Section 4. Conversion of Funding Pathway. A student may elect to change their funding pathway one (1) time after making their initial election.

(1) The change request must be submitted to KHEAA in writing.

(2) The change shall become effective at the beginning of the next academic year following KHEAA's receipt and approval of the request.

(3) The KEES award maximum for a student transitioning from the traditional KEES pathway to the registered apprenticeship or qualified workforce training pathway shall be based on the student's postsecondary renewal amount for the last academic year completed in the traditional pathway.

CATHE DYKSTRA, Chair

APPROVED BY AGENCY: March 9, 2023

FILED WITH LRC: June 13, 2023 at 12:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 29, 2023, at 10:00 a.m. Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023. 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: Miles F. Justice, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7309, fax (502) 696-7293, email mjustice@kheaa.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Rebecca Gilpatrick

(1) Provide a brief summary of:

(a) What this administrative regulation does: The Authority is required to promulgate administrative regulations pertaining to Kentucky Educational Excellence Scholarship (KEES) program, including establishing procedures for making awards for scholarships for students participating in registered apprenticeship programs. This regulation establishes those procedures.

(b) The necessity of this administrative regulation: The Authority is required to promulgate administrative regulations pertaining to Kentucky Educational Excellence Scholarship (KEES) program, including establishing procedures for making awards for scholarships to students participating in registered apprenticeship programs. This regulation is necessary to establish those procedures consistent with the statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by establishing procedures for KEES awards to students participating in registered apprenticeship programs required by the statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist with the effective administration of the statutes by establishing procedures applicable to the scholarship program for students participating in registered apprenticeship 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 will change the existing administrative

regulation by allowing students participating in qualified workforce training programs to request reimbursement for actual expenses incurred in these programs to the extent of their earned KEES awards.

(b) The necessity of the amendment to this administrative regulation: This amendment to the administrative regulation is necessary in order to bring the regulation into alignment with KRS 164.7884.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by ensuring that all post-secondary programs eligible for reimbursement under the KEES program statute are identified as eligible within the regulation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by ensuring that the list of KEES reimbursement-eligible programs included in the regulation is complete and accurate.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Students participating in qualified workforce training programs who have earned KEES awards will be affected by this amendment to the administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: In order to comply with this amendment, students will need to be enrolled in qualified workforce training program, have earned a KEES award, and elect reimbursement of expenses incurred while participating in the program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to students participating in qualified workforce training programs in order to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with this amendment, otherwise eligible students will receive reimbursement for expenses incurred while participating in a qualified workforce training program to the extent of their earned KEES award.

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

(a) Initially: There will be no cost to implement this amended administrative regulation.

(b) On a continuing basis: Same as (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation. The KEES program is funded through net lottery revenues transferred in accordance with KRS 154A.130.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The administrative regulation does not establish any fees, nor does this administrative regulation directly or indirectly increase any fees.

(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 fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as

Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

FISCAL NOTE

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.7874, 164.7877(3), 164.7879(1), (2), (3), 164.7881(4)(a), (c), (6), 164.7884.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 not generate any revenue.

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(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 regulated entities - KEES award recipients participating in qualified workforce training programs - will incur no cost savings as a result of this regulation during the first full year in which it is in effect since there are no costs incurred by those regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Same as 4a above.

(c) How much will it cost the regulated entities for the first year? The regulated entities - KEES award recipients participating in qualified workforce training programs - will incur no costs for the first year in which this administrative regulation is in effect.

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

Same as 4c above.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. This administrative regulation will not have a major economic impact on the Authority or regulated entities.

**GENERAL GOVERNMENT CABINET
Kentucky Registry of Election Finance
(Amendment)**

32 KAR 1:020. Statement of spending intent and appointment of campaign treasurer.

RELATES TO: KRS 121.160(1), 121.180(1)

STATUTORY AUTHORITY: KRS 121.120(1)(g), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(g) grants the Registry the power to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. KRS 121.120(4) requires the Registry to promulgate administrative regulations and prescribe forms for the making of reports under KRS Chapter 121. KRS 121.015(18) defines "form" to mean an "an online Web page of an electronic document designed to capture, validate, and submit data for processing to the registry." KRS 121.160(1) requires candidates [as part of their filing papers] to designate a campaign treasurer. KRS 121.180(1) permits certain candidates to use an electronic form to request an exemption from reporting to the Registry when they file for office. This administrative regulation establishes the Web page from which candidates designate their treasurers and state their spending intents. [a single form for the appointment of a campaign treasurer and the optional request for exemption from reporting.]

Section 1. Appointment of Campaign Treasurer. Candidates shall designate campaign treasurers, as required by KRS 121.160(1), or state whether they will act as their own campaign treasurers prior to beginning to campaign for each primary, regular, or special election by using the Kentucky Election Finance Management System found on the Registry's Web site at <https://kref.ky.gov>. ~~[The Statement of Spending Intent and Appointment of Campaign Treasurer Form shall be the official form to be used by candidates for the appointment of a campaign treasurer under KRS 121.160(1).]~~

Section 2. Optional Request for Reporting Exemption. Candidates shall state whether they are exempt from filing campaign finance reports, as required by KRS 121.180(1)(a), by stating their spending intents for each primary, regular, or special election by using the Kentucky Election Finance Management System found on the Registry's Web site at <https://kref.ky.gov>. ~~[(4) The Statement of Spending Intent and Appointment of Campaign Treasurer Form shall be the official form to be used by candidates seeking an exemption from election finance reporting under KRS 121.180(1)(a).]~~

~~(2) The Statement of Spending Intent and Appointment of Campaign Treasurer Form shall be the official form to be used by candidates seeking to rescind a request for exemption from election finance reporting under KRS 121.180(1)(b).~~

Section 3. Incorporation by Reference.

~~(1) The "Statement of Spending Intent and Appointment of Campaign Treasurer Form" reference KREF-001, revised 11/2017 is incorporated by reference.~~

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

JOHN R. STEFFEN, Executive Director

APPROVED BY AGENCY: June 14, 2023

FILED WITH LRC: June 15, 2023 at 9:10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2023, at 10:00AM, at the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an

opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023, at 11:59 PM. 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: Leslie Saunders, General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-2226, fax (502) 573-5622, email LeslieM.Saunders@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leslie Saunders

(1) Provide a brief summary of:

(a) What this administrative regulation does:

KRS Chapter 121.160 requires state and local candidates to designate a campaign treasurer and KRS 121.180 allows candidates to request an exemption from making certain campaign finance reports otherwise required if they expect to spend under \$3,000. This administrative regulation tells candidates how to provide the Registry with that information.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because, while the statutes cited above describe candidate's filing obligations or options, they do not detail the mechanism by which candidates and slates of candidate should provide that information. Both mention only note that the regulated entities shall use a form provided by the Registry.

(c) How this administrative regulation conforms to the content of the authorizing statutes: As noted above, the Registry is given the authority by statute to provide forms for the various filings that KRS Chapter 121 requires of candidates. Further, the General Assembly amended KRS 121.015 last year to make the definition of "form" mean "an online Web page or an electronic document designed to capture, validate, and submit data for processing to the registry, unless the context otherwise prescribes."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It gives the location of the Web page candidates use to designate their treasurers and, if desired, to request their reporting exemptions.

(2) If 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 original administrative regulation listed and incorporated by reference paper forms to provide the required information to the Registry. This amendment removes the mention of paper forms, which the Registry no longer uses, and replaces them with the Web page of the Kentucky Electronic Finance Management System, an electronic filing system that is required under KRS 121.120(6)(h).

(b) The necessity of the amendment to this administrative regulation: As noted above, the paper forms are no longer in use and, therefore, the administrative regulation as currently written is incorrect.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment brings the administrative regulation into conformity with the electronic filing requirements in KRS 121.120(6)(h). Candidates have been required to file electronically since 2020 by KRS 121.120 and this amendment catches the administrative regulation up to both what is happening in reality and what the statute now requires.

(d) How the amendment will assist in the effective administration of the statutes: Without this amendment, candidates have a duty to designate a treasurer, but no mechanism by which to do so. Similarly, they have an option, under the statute cited above, to request a reporting exemption, but are not told how to make that request.

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

administrative regulation: All candidates for state and local offices are 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: Instead of filing the paper Statement of Spending Intent and Appointment of Campaign Treasurer form (KREF 001), the regulated entities will create a secured account through the Kentucky Electronic Management System and will use that system to provide the information formerly on the KREF 001.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance will provide the regulated population with efficient access to the administrative body's statutorily mandated electronic filing system.

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

(a) Initially: There will be no initial cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: There will be no cost on a continuous basis to the administrative body to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: While no additional funding will be required for the implementation and enforcement of this administrative regulation, the administrative body operates solely on 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: It will not be necessary to increase fees or funding to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? This administrative regulation itself does not apply tiering as the registration requirements under statute are the same for all candidates. The statute itself divides candidates into those that expect to raise or spend \$3,000 or more and those that do not. To that extent, the administrative regulation describes how those under the \$3,000 threshold make a request for exemption from most reporting 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 Registry of Election Finance

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 121.015, KRS 121.120, KRS 121.160. and KRS 121.180

(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 will not generate revenue for the first year.

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

(c) How much will it cost to administer this program for the first

year? This program will not cost any additional amount to administer for the first year.

(d) How much will it cost to administer this program for subsequent years? This program will not cost any additional amount to administer for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation will not generate any cost savings for the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation will not generate any cost savings for subsequent years.

(c) How much will it cost the regulated entities for the first year? This administrative regulation will not cost the regulated entities anything for the first year.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation will not cost the regulated entities anything 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)]. This administrative regulation will not have a major economic impact.

GENERAL GOVERNMENT CABINET Kentucky Registry of Election Finance (Amendment)

32 KAR 1:030. Campaign Finance Statements. [Election finance statement forms; campaign contributions or expenditures in excess of \$3,000.]

RELATES TO: KRS 121.180

STATUTORY AUTHORITY: KRS 121.120(1)(g), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(g) authorizes the Registry to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. KRS 121.120(4) requires the Registry to promulgate administrative regulations and prescribe forms for the making of reports under KRS Chapter 121. KRS 121.015(18) defines "form" to mean an "an online Web page of an electronic document designed to capture, validate, and submit data for processing to the registry." This administrative regulation specifies the Web page from which [forms to be used by] candidates, slates of candidates, contributing organizations, and committees shall file campaign finance reports required by KRS 121.180. It also specifies how an executive committee of a political party determines whether it files annually or semiannually under KRS 121.180(2)(c) [committees, and incorporates those forms by reference].

Section 1. All [The following] candidates, slates of candidates, contributing organizations, and committees shall file the reports required by KRS 121.180 using the Kentucky Election Finance

Management System found on the Registry's Web site at <https://kref.ky.gov> on the forms incorporated by reference in this administrative regulation:

(1) ~~Candidate campaign funds, gubernatorial slate campaign funds, political issues committees, and candidate-authorized campaign committees who register an intent to raise or spend more than \$3,000 or actually receive contributions or make expenditures in excess of \$3,000; and~~

(2) ~~All permanent committees, caucus campaign committees, inaugural committees, contributing organizations, unauthorized campaign committees, and political party executive committees regardless of the amount of contributions or expenditures.]~~

Section 2. If an executive committee of a political party has ten thousand dollars (\$10,000) or more in its campaign account fund at any time during the twelve-month period before July 1, it shall make the campaign finance reports required by KRS 121.180(2)(c) semiannually. In making this determination, the committee shall include any funds received from income tax checkoff contributions in accordance with KRS 141.071(2), whether or not those funds are kept in an account separate from other campaign funds. A committee that does not have more than ten thousand dollars (\$10,000) in the twelve-month period before July 1 shall use the Kentucky Election Finance Management System found on the Registry's Web site at <https://kref.ky.gov> to certify to the registry that it is not required to file a campaign finance report by July 31.
[Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Candidate/Slate of Candidates Election Finance Statement", reference KREF 006, revised 08/2018;

(b) "Executive Committee/ Caucus Campaign Committee Election Finance Statement", reference KREF 006/EC, revised 08/2018;

(c) "Unauthorized Campaign Committee/ Political Issues Committee Election Finance Statement", reference KREF 006/UCC-IG, revised 08/2018;

(d) "Inaugural Committee Election Finance Statement", reference KREF 006/I, revised 08/2018; and

(e) "Permanent Committee (PAC)/ Contributing Organization Election Finance Statement", reference KREF 006/PAC-CO, revised 08/2018.

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

JOHN R. STEFFEN, Executive Director

APPROVED BY AGENCY: June 14, 2023

FILED WITH LRC: June 15, 2023 at 9:10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2023, at 10:00AM, at the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023, at 11:59 PM. 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: Leslie Saunders, General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-2226, fax (502) 573-5622, email LeslieM.Saunders@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leslie Saunders

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 121.180 requires candidates, slates of candidates, contributing organizations, and committees to make reports of contributions and expenditures on prescribed reporting schedules. This administrative regulation tells candidates how to provide the Registry with that information. Also, 2023 HB 302 allowed certain executive committees of political parties with less than \$10,000 in their campaign fund accounts to report annually instead of semi-annually. This administrative regulation gives a date by which those committees determine whether they meet the requirements for annual reporting

(b) The necessity of this administrative regulation: This administrative regulation is necessary because, while the statutes cited above describe candidate's filing obligations or options, they do not detail the mechanism by which the entities should provide that information. Both mention only note that the candidates use a form provided by the Registry. Further, the amendment to KRS 121.180(2)(c) did not provide a date by which executive committees of political parties determine whether they have reached the \$10,000 threshold. This administrative regulation states that the committee determine whether it had \$10,000 in its campaign fund account at any time before the first semiannual is due and that it includes both general campaign account funds and income tax checkoff funds.

(c) How this administrative regulation conforms to the content of the authorizing statutes: As noted above, the Registry is given the authority by statute to provide forms for the various filings that KRS Chapter 121 requires of candidates, slates of candidates, contributing organizations, and committees. Further, the General Assembly amended KRS 121.015 last year to make the definition of "form" mean "an online Web page or an electronic document designed to capture, validate, and submit data for processing to the registry, unless the context otherwise prescribes."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It gives the location of the Web page candidates, slates of candidates, contributing organizations, and committees use to file campaign finance reports.

(2) If 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 original administrative regulation listed and incorporated by reference paper forms to provide the required information to the Registry. This amendment removes the mention of paper forms, which the Registry no longer uses, and replaces them with the Web page of the Kentucky Electronic Finance Management System, an electronic filing system that is required under KRS 121.120(6)(h).

(b) The necessity of the amendment to this administrative regulation: As noted above, the paper forms are no longer in use and, therefore, the administrative regulation as currently written is incorrect.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment brings the administrative regulation into conformity with the electronic filing requirements in KRS 121.120(6)(i). Candidates, slates of candidates, contributing organizations, and committees have been required to file electronically since 2020 by KRS 121.120 and this amendment catches the administrative regulation up to both what is happening in reality and what the statute now requires.

(d) How the amendment will assist in the effective administration of the statutes: Without this amendment, candidates, slates of candidates, contributing organizations, and committees have a duty to file campaign finance statements, but no mechanism by which to do so. Also, the amendment reflects a change in the law from the 2023 General Assembly, clarifying how and when to determine if an executive committee of a political party has more than \$10,000 in its campaign account. Without setting parameters for making that determination it is unclear how the affected committees would know if the possibility of a reduced filing schedule would apply to them.

(3) List the type and number of individuals, businesses,

organizations, or state and local governments affected by this administrative regulation: All candidates, slates of candidates, contributing organizations, and committees as defined in KRS 121.015 in Kentucky are 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: Instead of filing the paper Statement of Spending Intent and Appointment of Campaign Treasurer form (KREF 001), the regulated entities will create a secured account through the Kentucky Electronic Management System and will use that system to provide the information formerly on the KREF 006.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance will provide the regulated population with efficient access to the administrative body's statutorily mandated electronic filing system.

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

(a) Initially: There will be no initial cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: There will be no cost on a continuous basis to the administrative body to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: While no additional funding will be required for the implementation and enforcement of this administrative regulation, the administrative body operates solely on 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: It will not be necessary to increase fees or funding to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? This administrative regulation itself does not apply tiering as the reporting requirements are the same for all entities, subject to the statutory differences in the reporting schedule. By statute, candidates, slates of candidates, and political issues committees that expect to raise or spend under certain statutory thresholds report less frequently, but their registration requirements, the subject with which this administrative regulation is concerned, remain 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? The Kentucky Registry of Election Finance

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 121.015, KRS 121.120, and KRS 121.180

(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 will not generate revenue for the first year.

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

(c) How much will it cost to administer this program for the first

year? This program will not cost any additional amount to administer for the first year.

(d) How much will it cost to administer this program for subsequent years? This program will not cost any additional amount to administer for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation will not generate any cost savings for the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation will not generate any cost savings for subsequent years.

(c) How much will it cost the regulated entities for the first year? This administrative regulation will not cost the regulated entities anything for the first year.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation will not cost the regulated entities anything 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)]. This administrative regulation will not have a major economic impact.

GENERAL GOVERNMENT CABINET Kentucky Registry of Election Finance (Amendment)

32 KAR 1:050. Political organization registration.

RELATES TO: KRS 121.015(3), (4), 121.170

STATUTORY AUTHORITY: KRS 121.015(3), (4), 121.120(1)(g), (4), 121.170(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(g) authorizes the Registry to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. KRS 121.120(4) requires the registry to promulgate administrative regulations and prescribe forms for the making of reports under KRS Chapter 121. KRS 121.015(3)(b)5. requires the Registry to determine by administrative regulation what constitutes a minor political party for purposes of committee registration. As defined in KRS 121.015(4), a "contributing organization" is subject to contribution limits and required to file periodic campaign finance reports [reports of campaign finances] under KRS 121.180(6). KRS 121.015(18) defines "form" to mean an "an online Web page of an electronic document designed to capture, validate, and submit data for processing to the registry." This administrative regulation defines "minor political party" and "executive committee" [for purposes of Kentucky's Campaign Finance Regulation (KRS Chapter 121),] and specifies the Web page that committees and contributing organizations shall use for registration. [the form to be used for registration by committees and contributing organizations, and incorporates the form by reference.]

Section 1. Definitions.

(1) "Executive committee" means an organizational unit or affiliate recognized within the document governing a political party, that raises and spends funds to promote political party nominees, and performs other activities commensurate with the day-to-day operation of a political party, including voter registration drives, assisting candidate fundraising efforts, holding state conventions or local meetings, and nominating candidates for local, state, and federal office.

(2) "Minor political party" means an association, committee, organization, or group having constituted authority for its governance and regulation, which nominates or selects a candidate for election to any federal or statewide-elected state office in Kentucky, whose name appears on an election ballot as the candidate of the association, committee, organization, or group, and does not have a recognized caucus campaign committee within the Kentucky House or Senate, as defined in KRS 121.015(3)(b)1.-4.

(3) "Political organization" means any committee or contributing organization, as those terms are defined in KRS 121.015(3) and (4).

Section 2. Political Organization Registration. Campaign committees, caucus campaign committees, political issues committees, permanent committees, inaugural committees, executive committees, and contributing organizations shall register using the Kentucky Election Finance Management System found on the Registry's Web site at <https://kref.ky.gov>. ~~The "Political Organization Registration" form, KREF 010, revised 01/2019 shall be the official form to be used for the registration of campaign committees, caucus campaign committees, political issues committees, permanent committees, inaugural committees, executive committees, and contributing organizations.]~~

[Section 3. Incorporation by Reference.

~~(1) "Political Organization Registration" form, KREF 010, revised 01/2019, is incorporated by reference.~~

~~(2) This material may inspected, copied, or obtained, subject to applicable copyright law, at the office of the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

JOHN R. STEFFEN, Executive Director

APPROVED BY AGENCY: June 14, 2023

FILED WITH LRC: June 15, 2023 at 9:10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2023, at 10:00AM, at the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023, at 11:59 PM. 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: Leslie Saunders, General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-2226, fax (502) 573-5622, email LeslieM.Saunders@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leslie Saunders

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines "executive committee," "minor political party," and "political organization" and describes the process for these entities for them to register with the Registry of Election Finance and make reports required by KRS 121.180.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because, while the statute cited above describe filing obligations or options of contributing organizations and committees, it does not detail the mechanism by which the entities should provide that information. It only notes that the contributing organizations and committees shall use a format provided by the Registry.

(c) How this administrative regulation conforms to the content of the authorizing statutes: As noted above, the Registry is given the authority by statute to provide forms for the various filings that KRS Chapter 121 requires of contributing organizations and committees. Further, the General Assembly amended KRS 121.015 last year to make the definition of "form" mean "an online Web page or an electronic document designed to capture, validate, and submit data for processing to the registry, unless the context otherwise prescribes."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It gives the location of the Web page contributing organizations, and committees use to register.

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

(a) How the amendment will change this existing administrative regulation: The original administrative regulation listed and incorporated by reference paper forms to provide the required information to the Registry. This amendment removes the mention of paper forms, which the Registry no longer uses, and replaces them with the Web page of the Kentucky Electronic Finance Management System, an electronic filing system that is required under KRS 121.120(6)(h).

(b) The necessity of the amendment to this administrative regulation: As noted above, the paper forms are no longer in use and, therefore, the administrative regulation as currently written is incorrect.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment brings the administrative regulation into conformity with the electronic filing requirements in KRS 121.120(6)(i). Contributing organizations and committees have been required to file electronically since 2020 by KRS 121.120 and this amendment catches the administrative regulation up to both what is happening in reality and what the statute now requires.

(d) How the amendment will assist in the effective administration of the statutes: Without this amendment contributing organizations and committees have a duty to file campaign finance statements, but no mechanism by which to do so.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All contributing organizations and committees as defined in KRS 121.015 in Kentucky are 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: Instead of filing the paper Political Organization Registration form (KREF 010), the regulated entities will create a secured account through the Kentucky Electronic Management System and will use that system to provide the information formerly on the KREF 006.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance will provide the regulated population with efficient access to the administrative body's statutorily mandated electronic filing system.

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

(a) Initially: There will be no initial cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: There will be no cost on a continuous basis to the administrative body to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: While no additional funding will be required for the implementation and enforcement of this administrative regulation, the administrative body operates solely on 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: It will not be necessary to increase fees or funding to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? This administrative regulation itself does not apply tiering as the registration requirements under statute are the same for all committees and contributing organizations.

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 Registry of Election Finance

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 121.015, KRS 121.120, KRS 121.170, KRS 121.180

(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 will not generate revenue for the first year.

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

(c) How much will it cost to administer this program for the first year? This program will not cost any additional amount to administer for the first year.

(d) How much will it cost to administer this program for subsequent years? This program will not cost any additional amount to administer for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation will not generate any cost savings for the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation will not generate any cost savings for subsequent years.

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

year? This administrative regulation will not cost the regulated entities anything for the first year.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation will not cost the regulated entities anything 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)]. This administrative regulation will not have a major economic impact.

EXECUTIVE CABINET Kentucky Commission on Human Rights (Amendment)

104 KAR 1:010. Posting, distribution and availability of notices and pamphlets.

RELATES TO: KRS 344.190

STATUTORY AUTHORITY: KRS 13A.100, 344.190(14)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to establish requirements for persons defined in KRS 344.010, 344.030, 344.130 and 344.367, to post, distribute and make available notices and pamphlets.

Section 1. Equal Employment Opportunity Notices. (1) An employer, employment agency, licensing agency and labor organization, shall post and maintain at its establishment equal employment opportunity notices such as the Equal Employment Opportunity Poster.

(2) Equal employment opportunity notices shall be posted and shall be readily apparent to an employee and applicant for employment. They shall be posted:

(a) In easily-accessible and well-lighted places; and

(b) At or near each location where the employee's services are performed.

(3) A Labor organization shall post "equal employment opportunity" notices in easily-accessible and well-lighted places. The notices shall be readily apparent to member and an applicant for membership.

Section 2. Public Accommodations Welcome Notice. (1) An owner, lessee, proprietor, or manager of a place of public accommodation, resort, or amusement, shall post and maintain at a place of public accommodation, resort or amusement welcome notices such as the Public Accommodations Poster.

(2) Public accommodation welcome notices shall be posted where they may be readily observed by those seeking or granting any of the accommodations, advantages, facilities, or privileges of places of public accommodations, resort or amusement.

Section 3. Equal Housing Opportunity Notices. (1) A person or business entity engaged in a real estate or real estate-related transaction shall post and maintain at each location where services are regularly performed, the equal housing opportunity notices such as the Fair Housing Poster.

(2) Equal housing opportunity notices shall be posted at each location where services are regularly performed, in an easily-accessible and well-lighted place. The notice shall be readily apparent to a person seeking services.

Section 4. Fair Housing Law Brochure[Pamphlets]. A person or entity engaged in real estate or real estate-related transactions

shall provide to owners and customers at the time of sale, purchase, rental, insuring or financing of real property, a copy of the Fair Housing Brochure [pamphlet "What Kentucky's Fair Housing Law Means".]

Section 5. Incorporation by Reference. [Material Incorporated by Reference.]

(1) The following material is incorporated by reference:

(a) "Equal Employment Opportunity Poster" [Notice", February, 1993];

(b) "Public Accommodations Poster" [Welcome Notice", February, 1993];

(c) "Fair Housing Poster" [Equal Housing Opportunity Notice" February, 1993];

(d) "Fair Housing Brochure" [Pamphlet: "What Kentucky's Fair Housing Law Means", February, 1993].

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

(a) at [At] the Office of the Kentucky Commission on Human Rights, [The Heyburn Building, Suite 700,] 332 West Broadway, Suite 1400, Louisville, Kentucky 40202, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or from the Kentucky Commission on Human Rights website at https://kchr.ky.gov/Resources/Pages/Brochures-and-Posters.aspx. [or

(b) By calling:

1. (502) 595-4024;

2. (800) 292-5566;

3. (502) 595-4084 (TDD), for the hearing impaired;

4. Kentucky Relay Service (800) 648-6056 (TTY/TDD).]

RAYMOND BURSE, Commission Chair

CYNTHIA FOX, Executive Director

APPROVED BY AGENCY: May 24, 2023

FILED WITH LRC: June 14, 2023 at 1:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2023, at 10 a.m. Eastern Time at the office of the Kentucky Commission on Human Rights, 332 W. Broadway, Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023. 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: L. Joe Dunman, Staff Attorney Manager/Assistant General Counsel, Kentucky Commission on Human Rights, 332 W. Broadway, Louisville, Kentucky 40202, phone (502) 595-4024, email joe.dunman@ky.gov; Colt Sells, Staff Attorney II, Kentucky Commission on Human Rights, 332 W. Broadway, Louisville, Kentucky 40202, phone (502) 595-4024, email colt.sells@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: L. Joe Dunman, Staff Attorney Manager/Asst. General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation requires employers, labor organizations, public accommodations, real estate operators, and real estate brokers to post notices stating that they provide equal opportunities as required by KRS 344.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because, pursuant to KRS

344.190, it establishes notice standards and procedures enforced by the Kentucky Commission on Human Rights.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 344.190(14) authorizes the Kentucky Commission on Human Rights "To adopt, promulgate, amend, and rescind regulations to effectuate the purposes and provisions of [KRS 344], including regulations requiring the posting of notices prepared or approved by the commission." This regulation relates to the posting of notices.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the administration of KRS 344 by requiring employers, labor organizations, public accommodations, real estate operators, and real estate brokers to post notices stating that they provide equal opportunities in compliance with KRS 344.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates the names of material incorporated by reference to the most recent names given them by the Kentucky Commission on Human Rights. It also conforms the regulation to the format requirements of KRS 13A.2251 and updates the Commission's contact information.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure employers, labor organizations, public accommodations, real estate operators, and real estate brokers can find and post the correct notices as required under KRS 344.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 344.190(14) authorizes the Kentucky Commission on Human Rights "To adopt, promulgate, amend, and rescind regulations to effectuate the purposes and provisions of [KRS 344], including regulations requiring the posting of notices prepared or approved by the commission." This regulation relates to the posting of notices.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation is necessary to ensure employers, labor organizations, public accommodations, and housing providers can find and post the correct notices as required under KRS 344.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to all individuals, businesses, or state and local governments subject to KRS 344, which includes all "employers," "employment agencies," "labor organizations," "employees," "public accommodations," "real estate operators," and "real estate brokers" as defined by KRS 344.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities must post notices stating their compliance with the provisions of KRS 344.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are imposed by this amendment. The notices are provided for free by the Kentucky Commission on Human Rights, as stated in the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this regulation will ensure fair and equal treatment for all Kentuckians in employment, as already required by KRS 344.

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

(a) Initially: The expected cost to implement this administrative regulation initially is nominal.

(b) On a continuing basis: The expected cost to implement this administrative regulation on a continuing basis is nominal.

(6) What is the source of the funding to be used for the

implementation and enforcement of this administrative regulation: Funds from the budget of the Kentucky Commission on Human Rights will be used for the implementation and enforcement of this regulation.

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

(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 this regulation will apply to all those subject to KRS 344 throughout all of the counties of 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? Any units, parts, or divisions of state or local governments that qualify as "employers," "labor organizations," "public accommodations," "real estate operators," or "real estate brokers" as defined by KRS 344 will be impacted by this regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is authorized by KRS 344.190.

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

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

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

(c) How much will it cost to administer this program for the first year? This regulation will not impose any additional costs.

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

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

Revenues (+/-): Not applicable.

Expenditures (+/-): Not applicable.

Other Explanation:

(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 (+/-): Not applicable.

Expenditures (+/-): Not applicable.

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. [KRS13A.010(13)]. This regulation will not have a major economic impact.

EXECUTIVE CABINET Kentucky Commission on Human Rights (Amendment)

104 KAR 1:040. Guidelines for advertising employment or licensing opportunities.

RELATES TO: KRS 344.040, 344.050, 344.060, 344.070, 29 U.S.C. 623(f), 42 U.S.C. 2000e-2(e)

STATUTORY AUTHORITY: KRS 344.190, 344.080, 29 C.F.R. 1604.5

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes the procedures to be used by an employer, licensing agency, labor organization or employment agency in advertising for jobs or licensing opportunities.

Section 1. Definition. Bona fide occupational qualification is defined in 42 U.S.C. 2000e-2(e) and 29 U.S.C. 623(f). [USC 2000e-2(e) and 29 USC 623(f).]

Section 2. Help Wanted Notices or Advertisements.

[(1)] An advertisement or notice shall utilize a neutral job qualification, title, term, phrase or description unless a person's sex, religion, age between forty (40) and seventy (70), or national origin is deemed by the commission to be a bona fide occupational qualification.

[(2) Employers shall, if possible, utilize gender neutral position titles and job descriptions selected from the commission's listing of "Gender Neutral Employee Advertisement" or "Gender Neutral Employment Terminology."]

Section 3. Bona-fide Occupational Qualification.

(1) An employer, labor organization, licensing agency, or employment agency shall have the burden of establishing with the commission that either sex, religion, age between forty (40) and seventy (70), or national origin is a bona fide occupational qualification.

(2) A sex or gender-based bona fide occupational qualification shall:

(a) Be necessary for reasons of personal modesty or privacy; and

(b) Comply with EEOC guidelines on "Job opportunities advertising" as found in Part 1604—Guidelines on Discrimination Because of Sex, 29 C.F.R. 1604.5. ["Guidelines on Job Opportunity Advertising on the Basis of Sex".]

Section 4.

(1) A person who intends to publish, print, circulate, or display a job advertisement may request the commission to determine whether sex, religion, age between forty (40) and seventy (70), or national origin is a bona fide occupational qualification for the job to be advertised.

(2)

(a) Within three (3) workdays of receipt of the request, the commission shall:

1. Make a determination in writing; and

2. Forward its written determination.

(b) The determination of the commission shall be based on:

1. The specific job;

2. Whether the qualification is reasonably necessary to the normal operation of the business; and

3. Any other pertinent factors.

Section 5. Newspapers and other publications which print employment advertisements shall be encouraged by the

commission to:

- (1) Maintain lists of gender-neutral terms; and
- (2) Instruct their employees to advise advertisers of gender neutral job qualifications, titles and descriptions.

Section 6.

(1) In a conciliation agreement or order, the commission may include a provision requiring the respondent to use the term "equal opportunity employer", or a substantially similar term, in a notice or advertisement of employment or licensing opportunity.

(2) Persons advertising for employment opportunities shall be encouraged by the commission to use the terms specified in subsection (1) of this section in a notice or advertisement.

~~[Section 7. Materials Incorporated by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Gender Neutral Employee Advertisement (February, 1993)";~~

~~(b) "Gender Neutral Employment Terminology (February, 1993)";~~

~~(c) "EEOC Guidelines on Job Opportunity Advertising on the Basis of Sex: 29 CFR 1604.5 Job Opportunities Advertising";~~

~~(2) This material may be inspected, copied or obtained:~~

~~(a) At the offices of the Kentucky Commission on Human Rights, The Heyburn Building, Suite 700, 332 West Broadway, Louisville, Kentucky 40202; or~~

~~(b) By calling:~~

~~1. (502) 595-4024;~~

~~2. (800) 295-5566;~~

~~3. (502) 595-4084, (TDD), for the hearing impaired;~~

~~4. Kentucky Relay Service, (800) 648-6056 (TTY/TDD). This is to certify that the Commissioners of the Kentucky Commission on Human Rights have approved this administrative regulation as amended prior to its filing with the Legislative Research Commission, as required by KRS 344.190(14).]~~

RAYMOND BURSE, Commission Chair

CYNTHIA FOX, Executive Director

APPROVED BY AGENCY: May 24, 2023

FILED WITH LRC: June 14, 2023 at 1:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2023, at 10 a.m. Eastern Time at the office of the Kentucky Commission on Human Rights, 332 W. Broadway, Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023. 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: L. Joe Dunman, Staff Attorney Manager/Assistant General Counsel, Kentucky Commission on Human Rights, 332 W. Broadway, Louisville, Kentucky 40202, phone (502) 595-4024, email joe.dunman@ky.gov; Colt Sells, Staff Attorney II, Kentucky Commission on Human Rights, 332 W. Broadway, Louisville, Kentucky 40202, phone (502) 595-4024, email colt.sells@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: L. Joe Dunman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides advertising guidelines to employers, labor organizations, licensing agencies, and employment agencies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because, pursuant to KRS 344.190, it establishes standards and procedures enforced by the Kentucky Commission on Human Rights.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 344.190(14) authorizes the Kentucky Commission on Human Rights "To adopt, promulgate, amend, and rescind regulations to effectuate the purposes and provisions of [KRS 344], including regulations requiring the posting of notices prepared or approved by the commission." This regulation relates to the posting of notices and advertisements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the administration of KRS 344 by requiring employers, labor organizations, licensing agencies, and employment agencies to advertise job or licensing opportunities in compliance with the equal opportunity requirements of KRS 344.

(2) If 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 corrects the title of a federal regulation previously incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure employers, labor organizations, licensing agencies, and employment agencies can find and apply current federal regulations incorporated by the Commission on Human Rights.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 344.190(14) authorizes the Kentucky Commission on Human Rights "To adopt, promulgate, amend, and rescind regulations to effectuate the purposes and provisions of [KRS 344], including regulations requiring the posting of notices prepared or approved by the commission." This regulation relates to the posting of notices.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation is necessary to ensure employers, labor organizations, public accommodations, and housing providers can find and post the correct notices as required under KRS 344.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to all individuals, businesses, or state and local governments subject to KRS 344, which includes all "employers," "employment agencies," "labor organizations," "employees," "public accommodations," "real estate operators," and "real estate brokers" as defined by KRS 344.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities must post notices stating their compliance with the provisions of KRS 344.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are imposed by this amendment. The notices are provided for free by the Kentucky Commission on Human Rights, as stated in the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this regulation will ensure fair and equal treatment for all Kentuckians in

employment, as already required by KRS 344.

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

(a) Initially: The expected cost to implement this administrative regulation initially is nominal.

(b) On a continuing basis: The expected cost to implement this administrative regulation on a continuing basis is nominal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds from the budget of the Kentucky Commission on Human Rights will be used for the implementation and enforcement of this regulation.

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

(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 this regulation will apply to all those subject to KRS 344 throughout all of the counties of 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? Any units, parts, or divisions of state or local governments that qualify as "employers," "licensing agencies," "labor organizations," or "employment agencies" as defined by KRS 344 will be impacted by this regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is authorized by KRS 344.190.

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

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

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

(c) How much will it cost to administer this program for the first year? This regulation will not impose any additional costs.

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

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

Revenues (+/-): Not applicable.

Expenditures (+/-): Not applicable.

Other Explanation:

(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 (+/-): Not applicable.

Expenditures (+/-): Not applicable.

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. [KRS13A.010(13)]. This regulation will not have a major economic impact.

EXECUTIVE CABINET Kentucky Commission on Human Rights (Amendment)

104 KAR 1:050. Standards and procedures for providing equal employment opportunities.

RELATES TO: KRS 344.010-344.500, 344.990, 29 C.F.R. 1604.1-1604.4, 1604.6-1604.11, 1605.1-1605.3, 1606.1-1606.8, 1607.1-1607.16, 1608, 1630

STATUTORY AUTHORITY: KRS 344.190, 29 C.F.R. 1604.1-1604.11, 1605, 1607, 1608, 1630, 29 C.F.R. 1606

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes employment standards and procedures promulgated by the EEOC and enforced by the Kentucky Commission on Human Rights.

Section 1. Employment Discrimination Guidelines. In the determination of issues prohibiting employment discrimination the commission shall follow and enforce the following guidelines promulgated by the Equal Employment Opportunity Commission: []

[Section 2.—Federal Regulations Adopted Without Change.]

(1) ~~[The following federal regulations are adopted without change:~~

~~(a) Part 1605—Guidelines on Discrimination Because of Religion (and Appendix A to 1605.2 and 1605.3—Background Information); ["EEOC Guidelines on Discrimination Because of Religion (with Appendix A—Background Information):"] 29 C.F.R. 1605.1 to 1605.3; ["] 45 Federal Register 72612, October 31, 1980; []~~

~~(2) [(b)] Part 1604—Guidelines on Discrimination Because of Sex (and Appendix to Part 1604—Questions and Answers on the Pregnancy Discrimination Act); ["EEOC Guidelines on Sex Discrimination (with Appendix to Part 1604—Questions and Answers on the Pregnancy Discrimination Act):"] 29 C.F.R. 1604.1 to 1604.4 and 1604.6 to 1604.11; ["] 37 Federal Register 6836, April 5, 1972; [and] 44 Federal Register 23805, April 20, 1979; and 64 Federal Register 58333-01, October 29, 1999; []~~

~~(3) [(c)] Part 1607—Uniform Guidelines on Employee Selection Procedures (1978); ["EEOC Uniform Guidelines on Employee Selection Procedure,"] 29 C.F.R. 1607.1 to 1607.16; ["] 43 Federal Register 38295, August 25, 1978; []~~

~~(4) [(d)] Part 1606—Guidelines on Discrimination Because of National Origin; ["EEOC Guidelines on Discrimination Because of National Origin,"] 29 C.F.R. 1606.1 to 1606.8; ["] 45 Federal Register 85635, December 29, 1980, and 64 Federal Register 58333-01, October 29, 1999; []~~

~~(5) [(e)] Part 1630—Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act (and Appendix to Part 1630—Interpretative Guidance On Title I of the Americans With Disabilities Act); 29 C.F.R. 1630.1 to 1630.16.; 76 Federal Register 16999, March 25, 2011; and 81 Federal Register 31140, May 17, 2016; and ["Equal Employment Opportunity for Individuals with Disabilities" with Interpretive Guidance on Title I of the Americans with Disabilities Act and the Final Rule and Regulations, 29 C.F.R. 1630", 56 Federal Register 35725, July 26,~~

1992.]

(6) Part 1625—Age Discrimination in Employment Act; 29 C.F.R. 1625.1 to 1625.32; 46 Federal Register 47726, Sept. 29 1981; 53 Federal Register 5972, Feb. 29, 1988; 72 Federal Register 36875, July 6, 2007; 72 Federal Register 72938-01, Dec. 26, 2007; and 79 Federal Register 13547, March 11, 2014.

[~~(2) The federal regulations may be inspected, copied or obtained:~~

~~(a) At the Office of the Kentucky Commission on Human Rights, The Heyburn Building, Suite 700, 332 West Broadway, Louisville, Kentucky 40202; or~~

~~(b) By calling:~~

~~1. (502) 595-4024;~~

~~2. (800) 292-5566;~~

~~3. (502) 595-4084 (TDD), for the hearing impaired;~~

~~4. Kentucky Relay Service, (800) 648-6056 (TTY/TDD).~~

~~(c) The material referred to in subsection (1)(e) of this section is also available in the following alternative formats directly from the office of the Americans with Disabilities Act at (202) 514-0301 (voice), (202) 514-0381 (TDD) or (202) 514-6193 (electronic bulletin board):~~

~~1. Large print;~~

~~2. Braille;~~

~~3. Electronic file on computer disk;~~

~~4. Audio-tape.]~~

This is to certify that the Commissioners of the Kentucky Commission on Human Rights have approved this administrative regulation as amended prior to its filing with the Legislative Research Commission, as required by KRS 344.190(14).

RAYMOND BURSE, Commission Chair

CYNTHIA FOX, Executive Director

APPROVED BY AGENCY: May 24, 2023

FILED WITH LRC: June 14, 2023 at 1:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2023, at 10 a.m. Eastern Time at the office of the Kentucky Commission on Human Rights, 332 W. Broadway, Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023. 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: L. Joe Dunman, Staff Attorney Manager/Assistant General Counsel, Kentucky Commission on Human Rights, 332 W. Broadway, Louisville, Kentucky 40202, phone (502) 595-4024, email joe.dunman@ky.gov; Colt Sells, Staff Attorney II, Kentucky Commission on Human Rights, 332 W. Broadway, Louisville, Kentucky 40202, phone (502) 595-4024, email colt.sells@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: L. Joe Dunman or Colt Sells

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards and procedures for employers and labor organizations to provide equal employment opportunities and adopts federal regulations consistent with the text and purposes of KRS 344.010-500, 990.

(b) The necessity of this administrative regulation: Pursuant to KRS 344.190, this administrative regulation is necessary to establish employment standards and procedures promulgated by

the EEOC and enforced by the Kentucky Commission on Human Rights.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 344.190(14) authorizes the Kentucky Commission on Human Rights "to adopt, promulgate, amend, and rescind regulations to effectuate the purposes and provisions" of KRS 344. KRS 344.020(1) states that the purpose of KRS 344 is to "provide for the execution within the state of policies embodied" in several federal anti-discrimination laws, upon which KRS 344 is modeled.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the administration of KRS 344 in a way that is consistent with its counterpart federal anti-discrimination statutes 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 updates references to versions of federal regulations that have been superseded or revised and replaces them with references to the current versions of those same federal regulations.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to comply with KRS 344.190, which obligates the Kentucky Commission on Human Rights to cooperate with the federal Equal Employment Opportunity Commission and to adopt federal regulations promulgated by that agency. The amendment will replace references to obsolete versions of federal regulations with correct references to the current versions of those regulations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 344.190(14) authorizes the Kentucky Commission on Human Rights "to adopt, promulgate, amend, and rescind regulations to effectuate the purposes and provisions" of KRS 344, which include the mandate to cooperate with federal agencies such as the Equal Employment Opportunity Commission (KRS 344.190(5)).

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides accurate notice of all applicable regulations and rules to those subject to KRS 344 and allows the Kentucky Commission on Human Rights to meet its obligation to cooperate with the Equal Employment Opportunity Commission under KRS 344.190(5).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to all individuals, businesses, or state and local governments subject to KRS 344, which includes all "employers," "employment agencies," "labor organizations," and "employees" as defined under KRS 344.030.

(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 to comply with this amendment beyond the general requirement to comply with the anti-discrimination provisions of KRS 344

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are imposed by this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this regulation will ensure fair and equal treatment for all Kentuckians in employment, as already required by KRS 344.

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

(a) Initially: The expected cost to implement this administrative regulation initially is nominal.

(b) On a continuing basis: The expected cost to implement this administrative regulation on a continuing basis is nominal.

(6) What is the source of the funding to be used for the

implementation and enforcement of this administrative regulation: Funds from the budget of the Kentucky Commission on Human Rights will be used for the implementation and enforcement of this regulation.

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

(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 this regulation will apply to all those subject to KRS 344 throughout all of the counties of 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? Any units, parts, or divisions of state or local governments that qualify as "employers," "labor organizations," or "employment agencies" as defined by KRS 344 will be impacted by this regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is authorized by KRS 344.190.

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

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

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

(c) How much will it cost to administer this program for the first year? This regulation will not impose any additional costs.

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

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

Revenues (+/-): Not applicable.

Expenditures (+/-): Not applicable.

Other Explanation:

(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 (+/-): Not applicable.

Expenditures (+/-): Not applicable.

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 regulation will not have a major economic impact.

EXECUTIVE CABINET Kentucky Commission on Human Rights (Amendment)

104 KAR 1:080. Guidelines on fair housing.

RELATES TO: KRS 344.010, 344.360-344.385, 344.600-344.680

STATUTORY AUTHORITY: KRS 344.190(14), 24 C.F.R. 101.20, 101.25

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes standards and procedures for determining permissible conduct by persons engaged in real estate or real estate-related transactions.

Section 1. Definitions.

(1) "Conduct" means, in addition to practices prohibited by KRS 344.360, any action including statements, words, and utterances.

(2) "Real estate operator" is defined in KRS 344.010(8), and includes, subject to KRS 344.362 and 344.365, any person engaging in housing practices or any real estate or real estate-related transaction and is not limited to those persons regularly engaging in real estate as a business.

~~[(2) "Conduct" means in addition to practices prohibited by KRS 344.360 any action including statements, words, and utterances.]~~

Section 2. Discriminatory conduct, notice, statements and advertisements shall include:

(1) A written or oral notice or statement by a real estate operator; and

(2) Written notice or statement including an application, flyer, brochure, deed, sign, banner, poster, billboard, or a document used with respect to the sale or rental of housing accommodations; and

(3) Notices, statements and advertisements include the following:

(a) The use of words, phrases, photographs, illustrations, symbols or forms which convey that housing accommodations are available or not available to a particular group of persons because of race, color, religion, sex, disability, familial status, or national origin;

(b) Expressing to agents, brokers, employees, prospective sellers or renters or any other persons a preference for or limitation on any purchaser or renter because of race, color, religion, sex, disability, familial status, or national origin of such persons;

(c) Selecting media or locations for advertising the sale or rental of housing accommodations which deny particular segments of the housing market information about housing opportunities because of race, color, religion, sex, disability, familial status, or national origin; and

(d) Refusing to publish advertising for the sale or rental of housing accommodations or requiring different charges or terms for such advertising because of race, color, religion, sex, disability, familial status, or national origin; and

(4) Discriminatory representations on the availability of dwellings shall include those specified in 24 C.F.R. 100.80(a) and (b).~~["Prohibited words, phrases, symbols and visual aids" shall include those specified in 24 CFR 109.20(a) to (f).]~~

(5) Use of advertising media shall comply with the provisions of 24 C.F.R. 100.75, 61 Federal Register 5205, February 9, 1996[24 CFR 109.25(a) to (e)].

(6) Occupancy restrictions because of familial status.

(a) Real estate operators may enforce nondiscriminatory policies or standards involving reasonable occupancy restrictions on the basis of familial status.

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(b) In reviewing occupancy restrictions, the Kentucky Commission on Human Rights shall consider the:

1. Size of bedrooms and unit;
2. Age of children;
3. Configuration of unit; and
4. Other special circumstances which may warrant occupancy restrictions.

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

~~(a) "Use of words, phrases, symbols, and visual aids, 24 CFR 109.20(a) to (f)", (54 Federal Register 3308, January 23, 1989, as amended at 55 FR 53294, December 28, 1990).~~

~~(b) "Selective Use of Advertising Media or Content, 24 CFR 109.25(a) to (c)", (54 Federal Register 3308, January 23, 1989, as amended at 55 FR 53294, December 28, 1990).~~

~~(2) This material may be inspected, copied, or obtained:~~

~~(a) At the offices of the Kentucky Commission on Human Rights, the Heyburn Building, Suite 700, 332 West Broadway, Louisville, Kentucky 40202; or~~

~~(b) 1. (502) 595-4024;~~

~~2. (800) 292-5566;~~

~~3. (502) 595-4084 (TDD), for the hearing impaired;~~

~~4. Kentucky Relay Service, (800) 648-6056 (TDD/TDD).]~~

This is to certify that the Commissioners of the Kentucky Commission on Human Rights have approved this administrative regulation as amended prior to its filing with the Legislative Research Commission, as required by KRS 344.190(14).

RAYMOND BURSE, Commission Chair

CYNTHIA FOX, Executive Director

APPROVED BY AGENCY: May 24, 2023

FILED WITH LRC: June 14, 2023 at 1:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2023, at 10 a.m. Eastern Time at the office of the Kentucky Commission on Human Rights, 332 W. Broadway, Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023. 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: L. Joe Dunman, Staff Attorney Manager/Assistant General Counsel, Kentucky Commission on Human Rights, 332 W. Broadway, Louisville, Kentucky 40202, phone (502) 595-4024, email joe.dunman@ky.gov; Colt Sells, Staff Attorney II, Kentucky Commission on Human Rights, 332 W. Broadway, Louisville, Kentucky 40202, phone (502) 595-4024, email colt.sells@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: L. Joe Dunman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards and procedures for real estate operators to provide equal housing opportunities and adopts federal regulations consistent with the text and purposes of KRS 344.010, 344.360-385, and KRS 344.600-680.

(b) The necessity of this administrative regulation: Pursuant to KRS 344.190, this administrative regulation is necessary to establish fair housing standards and procedures as promulgated by the Department of Housing and Urban Development and

enforced by the Kentucky Commission on Human Rights.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 344.190(14) authorizes the Kentucky Commission on Human Rights "to adopt, promulgate, amend, and rescind regulations to effectuate the purposes and provisions" of KRS 344. KRS 344.020(1) states that the purpose of KRS 344 is to "provide for the execution within the state of policies embodied" in several federal anti-discrimination laws, upon which KRS 344 is modeled.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the administration of KRS 344 in a way that is consistent with its counterpart federal anti-discrimination statutes 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 updates references to versions of federal regulations that have been superseded or revised and replaces them with references to the current versions of those same federal regulations.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to comply with KRS 344.190, which obligates the Kentucky Commission on Human Rights to cooperate with federal agencies in the administration of anti-discrimination policies. The amendment will replace references to obsolete versions of federal regulations with correct references to the current versions of those regulations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 344.190(14) authorizes the Kentucky Commission on Human Rights "to adopt, promulgate, amend, and rescind regulations to effectuate the purposes and provisions" of KRS 344, which include the mandate to cooperate with federal agencies such as the Department of Housing and Urban Development.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides accurate notice of all applicable regulations and rules to those subject to KRS 344 and allows the Kentucky Commission on Human Rights to meet its obligation to cooperate with the Equal Employment Opportunity Commission under KRS 344.190(5).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to all individuals, businesses, or state and local governments subject to KRS 344, which includes all "real estate operators" as defined by KRS 344.010(8).

(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 to comply with this amendment beyond the general requirement to comply with the anti-discrimination provisions of KRS 344.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are imposed by this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this regulation will ensure fair and equal treatment for all Kentuckians in employment, as already required by KRS 344.

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

(a) Initially: The expected cost to implement this administrative regulation initially is nominal.

(b) On a continuing basis: The expected cost to implement this administrative regulation on a continuing basis is nominal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds from the budget of the Kentucky Commission on Human

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Rights will be used for the implementation and enforcement of this regulation.

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

(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 this regulation will apply to all those subject to KRS 344 throughout all of the counties of 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? Any units, parts, or divisions of state or local governments that qualify as "real estate operators" as defined by KRS 344 will be impacted by this regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is authorized by KRS 344.190.

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

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

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

(c) How much will it cost to administer this program for the first year? This regulation will not impose any additional costs.

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

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

Revenues (+/-): Not applicable.

Expenditures (+/-): Not applicable.

Other Explanation:

(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 (+/-): Not applicable.

Expenditures (+/-): Not applicable.

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. [KRS13A.010(13)]. This regulation will not have a major economic impact.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. Not applicable. No federal statute or regulation mandates this state regulation.

(2) State compliance standards. Not applicable.

(3) Minimum or uniform standards contained in the federal mandate. Not applicable.

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

EXECUTIVE CABINET

Kentucky Commission on Human Rights (Amendment)

104 KAR 1:100. Nondiscrimination on the basis of disability by a place of public accommodations, licensing agencies and trade organizations.

RELATES TO: KRS 344.050, 344.060, 344.120, 344.130, 344.500, 28 C.F.R. 36

STATUTORY AUTHORITY: KRS 12.290, 344.190(14), 28 C.F.R. 36, 42 U.S.C. 12181

NECESSITY, FUNCTION, AND CONFORMITY: KRS 344.190(14) requires the Kentucky Commission on Human Rights to prescribe administrative regulations to effectuate the purposes and provisions of the Kentucky Civil Rights Act. This administrative regulation provides that all places of public accommodation be designed and constructed so as to be readily accessible to and usable by persons with disabilities. In addition, examinations or courses related to licensing or certification for professional and trade purposes shall be accessible to persons with disabilities.

Section 1. Part 36—Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, 28 C.F.R.[CFR] Part 36, 81 Federal Register 53240, August 11, 2016, 56 Federal Register 35592, July 26, 1991, [56 FR 355.43, January 26, 1992,] is adopted without change and supplements Title III of the Americans with Disabilities Act, which extends the prohibitions against disabilities discrimination to privately operated public accommodations and commercial facilities. It further requires that examinations or courses related to licensing or certification for professional and trade purposes be accessible to the disabled. This administrative regulation was promulgated by the U.S. Department of Justice and is enforced by the Kentucky Commission on Civil Rights.

[Section 2. ~~Material Adopted Without Change. The following material is adopted without change:~~

(1) ~~"Nondiscriminatory on the Basis of Disability by Public Accommodations and in Commercial Facilities" - 28 CFR 36, 56 Federal Register 35543, January 26, 1992.~~

(2) ~~This material may be inspected, copied, or obtained:~~

(a) ~~At the offices of the Kentucky Commission on Human Rights, The Heyburn Building, Suite 700, 332 West Broadway, Louisville, Kentucky 40202; or~~

(b) ~~By calling:~~

1. ~~(502) 595-4024;~~

2. ~~(800) 292-5566;~~

3. ~~(502) 595-4084, (TDD), for the hearing impaired;~~

4. ~~Kentucky Relay Service, (800) 648-6056 (TTY/TDD).~~

(c) ~~The material may also be obtained directly from the Office of The Americans With Disabilities Act at (202) 514-0301 (voice), (202) 414-0381 (TDD), or (202) 514-6193 (electronic bulletin board) in the following alternative formats:~~

1. Large print;
2. Braille;
3. Electronic file on computer disk;
4. Audio tape.]

This is to certify that the Commissioners of the Kentucky Commission on Human Rights have approved this administrative regulation as amended prior to its filing with the Legislative Research Commission, as required by KRS 344.190(14).

RAYMOND BURSE, Commission Chair
CYNTHIA FOX, Executive Director

APPROVED BY AGENCY: May 24, 2023

FILED WITH LRC: June 14, 2023 at 1:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2023, at 10 a.m. Eastern Time at the office of the Kentucky Commission on Human Rights, 332 W. Broadway, Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023. 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: L. Joe Dunman, Staff Attorney Manager/Assistant General Counsel, Kentucky Commission on Human Rights, 332 W. Broadway, Louisville, Kentucky 40202, phone (502) 595-4024, email joe.dunman@ky.gov; Colt Sells, Staff Attorney II, Kentucky Commission on Human Rights, 332 W. Broadway, Louisville, Kentucky 40202, phone (502) 595-4024, email colt.sells@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: L. Joe Dunman, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards and procedures for public accommodations, licensing agencies, and trade organizations to follow and adopts federal regulations consistent with the text and purposes of KRS 344.010-500, 990.

(b) The necessity of this administrative regulation: Pursuant to KRS 344.190, this administrative regulation is necessary to establish standards for public accommodations, licensing agencies, and trade organizations to ensure equal access and enjoyment by people with disabilities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 344.190(14) authorizes the Kentucky Commission on Human Rights "to adopt, promulgate, amend, and rescind regulations to effectuate the purposes and provisions" of KRS 344. KRS 344.020(1) states that the purpose of KRS 344 is to "provide for the execution within the state of policies embodied" in several federal anti-discrimination laws, upon which KRS 344 is modeled.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the administration of KRS 344 in a way that is consistent with its counterpart federal anti-discrimination statutes 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 updates a reference to a version of a federal regulation that has been superseded or revised and replaces it with a reference to the current version of the same federal

regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to comply with KRS 344.190, which obligates the Kentucky Commission on Human Rights to cooperate with the federal Equal Employment Opportunity Commission and to adopt federal regulations promulgated by that agency. The amendment will replace a reference to an obsolete versions of a federal regulation with correct references to the current version of that regulation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 344.190(14) authorizes the Kentucky Commission on Human Rights "to adopt, promulgate, amend, and rescind regulations to effectuate the purposes and provisions" of KRS 344.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides accurate notice of all applicable regulations and rules to those subject to KRS 344 and allows the Kentucky Commission on Human Rights.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to all individuals, businesses, or state and local governments subject to KRS 344, which includes all "public accommodations," "licensing agencies," and "labor organizations" as defined under KRS 344.030.

(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 to comply with this amendment beyond the general requirement to comply with the anti-discrimination provisions of KRS 344.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are imposed by this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this regulation will ensure fair and equal treatment for all Kentuckians in employment, as already required by KRS 344.

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

(a) Initially: The expected cost to implement this administrative regulation initially is nominal.

(b) On a continuing basis: The expected cost to implement this administrative regulation on a continuing basis is nominal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds from the budget of the Kentucky Commission on Human Rights will be used for the implementation and enforcement of this regulation.

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

(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 this regulation will apply to all those subject to KRS 344 throughout all of the counties of 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? Any units, parts, or divisions of state or local governments that qualify as "public accommodations," "licensing agencies," or "labor organizations" as defined by KRS 344 will be impacted by this regulation.

(2) Identify each state or federal statute or federal regulation

that requires or authorizes the action taken by the administrative regulation. This regulation is authorized by KRS 344.190.

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

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

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

(c) How much will it cost to administer this program for the first year? This regulation will not impose any additional costs.

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

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

Revenues (+/-): Not applicable.

Expenditures (+/-): Not applicable.

Other Explanation:

(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 (+/-): Not applicable.

Expenditures (+/-): Not applicable.

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 regulation will not have a major economic impact.

BOARD AND COMMISSIONS **Board of Pharmacy** **(Amendment)**

201 KAR 2:020. Examination.

RELATES TO: KRS 218A.205(7)(8), 315.050

STATUTORY AUTHORITY: KRS 218A.205(8), 315.050(2), 315.191(1), (2), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.050(2) and 315.191(1)(c) authorize the board to promulgate administrative regulations to prescribe the time, place, method, manner, scope, and subjects of examinations. KRS 218A.205(8) requires the board to establish requirements for background checks for licensees. This administrative regulation establishes the examination and application requirements for obtaining a license to practice pharmacy in Kentucky.

Section 1. The examination for licensure shall include:

(1) The North American Pharmacist Licensure Examination (NAPLEX); and

(2) The Multistate Pharmacy Jurisprudence Examination (MPJE).

Section 2. Both the NAPLEX and the MPJE examinations are graded as pass or fail.

Section 3. If an applicant fails an examination described in Section 2 of this administrative regulation, the applicant may upon proper application retake the examination. An applicant is limited to three (3) attempts for each examination without further board approval. An applicant is limited to a lifetime limit of five (5) attempts on each examination.

Section 4. If after three (3) examination attempts, the applicant has not passed, to qualify for two (2) additional attempts, the applicant shall:

(1) For the NAPLEX, complete a refresher course and submit to the Board of Pharmacy a certificate of completion; and

(2) For the MPJE, submit to the Board of Pharmacy:

(a) Proof of (5) five hours of ACPE or board approved continuing education in the topic of pharmacy law; or

(b) A certificate of completion of a refresher course.

Section 5. All results of examinations shall be preserved according to the Board of Pharmacy Record Retention Schedule.

Section 6. Prior to approval for examination, an applicant shall:

(1) Submit 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;

(2) Submit to a query to the National Practitioner Data Bank of the United States Department of Health and Human Services;

(3) Submit an Initial Application for Pharmacist Licensure that reports:

(a) Name, maiden, and other names used currently or previously;

(b) Address and telephone number;

(c) Date of birth;

(d) Social Security number;

(e) Citizenship;

(f) Sex;

(g) Name of pharmacy school;

(h) Intern Registration Number;

(i) Record of any conviction for any felony or misdemeanor offense;

(j) Record of any state licensing agency refusal of licensure, failure of examination, or refusal of examination; and

(k) Certificate of moral standing.

(4) Submit a Certification of College Graduation completed by the Dean of the College of Pharmacy where the applicant graduated pharmacy school; and

(5) Submit a Certification of Intern Hours completed by the College of Pharmacy where the applicant graduated, or the State Board of Pharmacy if the hours are outside of Kentucky.

Section 7. Fee. An applicant shall submit the fee established by 201 KAR 2:050, Section 1(1).

Section 8. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Initial Application for Pharmacist Licensure", [Form 4,] June 2023[3/2022]; and

(b) "Renewal Application for Pharmacist Licensure, June 2023"["Certification of College Graduation", Form 2, 03/2022; and

(c) "Certification of Intern Hours", Form 3, 03/2022].

(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, 8:00 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>.

CHRISTOPHER P. HARLOW, Executive Director

APPROVED BY AGENCY: June 7, 2023

FILED WITH LRC: June 7, 2023 at 1:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 30, 2023, at 10:00 a.m. Eastern Time via zoom teleconference. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023. 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 requirements for pharmacist licensure.

(b) The necessity of this administrative regulation: KRS 315.191(1)(a) authorizes the Board of Pharmacy to promulgate administrative regulations with minimum requirements for pharmacist licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements for pharmacist licensure and renewal.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes criteria for pharmacist licensure to ensure public protection.

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

(a) How the amendment will change this existing administrative regulation: This amendment only changes the initial application incorporated by reference and adds a renewal application for pharmacists.

(b) The necessity of the amendment to this administrative regulation: The forms need to be amended to ensure the provision regarding student loan default is removed because of a change in 2019 to state law.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations pertaining to pharmacists and pharmacies.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will further promote, preserve, and protect public health through effective regulation of pharmacists and pharmacies by ensuring the forms comply with the provisions in the law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates pharmacies and pharmacists will be affected minimally 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: Pharmacies and pharmacists will have to familiarize themselves with amended language. The board will help to educate pharmacists and pharmacies in these changes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The only fee is for the application for the license and license renewal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The ability to practice pharmacy for pharmacists with appropriate credentials.

(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: This regulation does not increase 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.

(9) TIERING: Is tiering applied? NO. Tiering is not applied because the regulation is applicable to all applicants for a pharmacist license 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 administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.191(1)(a).

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

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

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

(c) How much will it cost to administer this program for the first year? The administration of the program is included in the administrative costs of the board.

(d) How much will it cost to administer this program for subsequent years? The same as (c).

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

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: This regulation does not impact 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? 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? \$150.

(d) How much will it cost the regulated entities for subsequent years? \$125 annually.

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 (+/-): -150

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 regulation does not have major economic impact.

where new graduates plan on working.

BOARDS AND COMMISSIONS

Board of Pharmacy (Amendment)

201 KAR 2:050. Licenses and permits; fees.

RELATES TO: KRS 218A.205(3)(g), 315.035(1), (2), (4), 315.0351(1), 315.036(1), 315.050(5), 315.060, 315.110, 315.120, 315.191, 315.402

STATUTORY AUTHORITY: KRS 218A.205(3)(g), 315.035(1), (2), (4), 315.036(1), 315.050(5), 315.060, 315.110(1), 315.120(4), 315.191(1)(i), 315.402(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(i) authorizes the board to assess reasonable fees for services rendered to perform its duties and responsibilities. This administrative regulation establishes reasonable fees for the board to perform all the functions for which it is responsible.

Section 1. The following fees shall be paid in connection with pharmacist examinations and licenses, pharmacy permits, intern certificates, and the issuance and renewal of licenses and permits:

(1) Application for initial pharmacist license - \$150;

(2) Application and initial license for a pharmacist license by license transfer - \$250;

(3) Annual renewal of a pharmacist license - ninety-five (95) dollars;

(4) Delinquent renewal penalty for a pharmacist license - ninety-five (95) dollars;

(5) Annual renewal of an inactive pharmacist license - ten (10) dollars;

(6) Pharmacy intern certificate valid six (6) years - twenty-five (25) dollars;

(7) Duplicate of original pharmacist license wall certificate - seventy-five (75) dollars;

(8) Application for a permit to operate a pharmacy - \$150[\$125];

(9) Renewal of a permit to operate a pharmacy - \$150[\$125];

(10) Delinquent renewal penalty for a permit to operate a pharmacy - \$150[\$100] dollars;

(11) Change of location or change of ownership of a pharmacy or manufacturer permit - \$150[seventy-five (75) dollars];

(12) Application for a permit to operate as a manufacturer - \$150[\$125];

(13) Renewal of a permit to operate as a manufacturer - \$150[\$125];

(14) Delinquent renewal penalty for a permit to operate as a manufacturer - \$150[\$125];

(15) Change of location or change of ownership of a wholesale distributor license - \$150[seventy-five (75) dollars];

(16) Application for a license to operate as a wholesale distributor - \$150[\$125];

(17) Renewal of a license to operate as a wholesale distributor - \$150[\$125];

(18) Delinquent renewal penalty for a license to operate as a wholesale distributor - \$150[\$125]; and

(19) Query to the National Practitioner Data Bank of the United States Department of Health and Human Services - twenty-five (25) dollars;

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Non-Resident Pharmacy Permit, Form 3, 6/2023

(b) Application for Non-Resident Pharmacy Permit Renewal, Form 4, 6/2023

(c) Application for Permit to Operate a Pharmacy in Kentucky, Form 1, 6/2023

(d) Application for Resident Pharmacy Permit Renewal, Form 2, 6/2023

(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. This material is also available on the board's website at <https://pharmacy.ky.gov/Businesses/Pages/Pharmacy.aspx>.

CHRISTOPHER HARLOW, Executive Director

APPROVED BY AGENCY: June 7, 2023

FILED WITH LRC: June 7, 2023 at 1:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 30, 2023, at 10:00 a.m. Eastern Time via zoom teleconference. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023. 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 fees associated with Board of Pharmacy licensure.

(b) The necessity of this administrative regulation: KRS 315.191(1)(i) authorizes the Board of Pharmacy to assess reasonable fees for services rendered to perform its duties and responsibilities. This administrative regulation establishes reasonable fees for the board to perform all the functions for which it is responsible.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes reasonable fees for the board to perform all the functions for which it is reasonable.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation allows for the funding to support Board administration.

(2) If 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 increases fees for facilities permitted by the Board.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to ensure the Board is appropriately funded to cover personnel costs and comply with the administrative functions required for pharmacies, wholesale distributors, and manufacturers.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 315.191(1)(i) authorizes the Board of Pharmacy to assess reasonable fees for services rendered to perform its duties and responsibilities.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will further promote, preserve, and protect public health through effective regulation of permitted entities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates pharmacists will be affected minimally by this regulation amendment. Pharmacies, manufacturers and wholesale distributors will have increased fees of twenty-five dollars (25) for a new or a renewal license or permit. The application for change in location or change in ownership will have the same fee as the new and renewal applications because they require completion of a new application.

(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: During renewal, the identified entities will have an increased permitting fee to pay.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Cost of compliance for pharmacies, wholesale distributors, and manufacturers will be \$150.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These entities will have the benefit of ensured compliance with federal law due to the state adoption of the federal licensing standards.

(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.

Other explanation: n/a

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Board revenues from 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: Yes, this regulation assesses an increase in fees. The increase in fees are necessary to properly fund the Board for the administrative activities related to licensing and inspection to ensure the Board is achieving its mission of public and patient safety.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes, fees for pharmacies, manufacturers, and wholesale distributors.

(9) TIERING: Is tiering applied? No. Tiering is not applied because the regulation is applicable to all pharmacies, wholesale distributors, and manufacturers.

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 the only entity impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.191(1)(i); 315.035(4); 315.036(1); 315.110(1).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the

first full year the administrative regulation is to be in effect.

(a) How much 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 proposed amendment will increase revenue by \$91,925.

(b) How 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 proposed amendment will increase revenue by \$91,925.

(c) How much will it cost to administer this program for the first year? The Board of Pharmacy does not anticipate any additional cost to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? The Board of Pharmacy does not anticipate any additional cost to administer this regulation for the first year.

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

Revenues (+/-): Amendment will provide an annual \$91,925 in revenue.

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? 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? \$150 per permit.

(d) How much will it cost the regulated entities for subsequent years? \$150 annually.

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 (+/-): -\$150

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 regulation does not have major economic impact.

BOARDS AND COMMISSIONS

Board of Pharmacy

(Amendment)

201 KAR 2:076. Compounding.

RELATES TO: KRS 217.055(1)(2), 217.065(7), 315.020(1), 315.035(6), 315.035(1), 315.121, 315.191(1)(a), (g), 21 U.S.C. 353A
STATUTORY AUTHORITY: KRS 315.020(1), 315.035(6), 315.035(1), 315.191(1)(a), (g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.020(1) requires the owner of a pharmacy who is not a pharmacist to place a pharmacist in charge of the owner's pharmacy. KRS 315.035(6) authorizes the board to promulgate administrative regulations to assure that proper equipment and reference material is utilized[on-hand] considering the nature of the pharmacy practice conducted at the particular pharmacy and to assure reasonable health and safety standards for areas within the pharmacies, which are not subject to these standards under CHFS. KRS 315.191(1) authorizes the board to promulgate administrative regulations necessary to regulate and control all matters relating to pharmacists, pharmacist interns, pharmacy technicians, pharmacies, wholesale distributors, and manufacturers. This administrative regulation establishes the requirements for

compounding non-sterile and sterile preparations, and the preparation, compounding, dispensing and repackaging of radiopharmaceuticals in accordance with 21 U.S.C. 353A.

Section 1. Definitions.

(1) "API" means active pharmaceutical ingredient.

(2) "Designated person" means one (1) or more individuals assigned to be responsible and accountable for the performance and operation of the facility and personnel as related to the preparation of compounded non-sterile or sterile preparations or the preparation, compounding, dispensing and repackaging of radiopharmaceuticals.

(3) "Essential copy of a commercially available drug product" is a compounded preparation in which:

(a) The compounded preparation has the same API as the commercially available drug product;

(b) The APIs have the same, similar, or an easily substitutable dosage strength; and

(c) The commercially available drug product can be used by the same route of administration as prescribed for the compounded preparations, unless a prescriber determines that there is a change, made for an identified individual patient, which produces, for that patient, a significant difference from the commercially available drug product.

(4) "Hazardous Drug" means any drug identified by the National Institute for Occupational Safety and Health with at least one of the following criteria:

(a) Carcinogenicity, teratogenicity or developmental toxicity;

(b) Reproductive toxicity in humans;

(c) Organ toxicity at low dose in humans or animals;

(d) Genotoxicity; or

(e) New drugs that mimic existing hazardous drugs in structure or toxicity.

(5) "USP" means United States Pharmacopeia.

Section 2. Policies and Procedures.

(1) A policy and procedure manual for non-sterile [and sterile] compounding shall be readily available at a pharmacy for inspection purposes.

(2) The policy and procedure[A copy of the] manual shall be made available to the board upon request.

(3) The manual shall be reviewed and revised on an annual basis.

Section 3.[Section 2-] Standards.

(1) All non-sterile compounded preparations shall be compounded pursuant to [United States Pharmacopeia (USP)]USP 795[, unless specified portions submitted by a pharmacist have been waived by the board. Notwithstanding any USP guidance to the contrary, the addition of flavoring to a drug shall not be considered non-sterile compounding, if the additive:

(a) Is inert, nonallergenic, and produces no effect other than the instillation or modification of flavor; and

(b) Is not greater than five (5) percent of the drug product's total volume].

(2) All sterile compounded preparations shall be compounded pursuant to USP 797[, unless specified portions submitted by a pharmacist have been waived by the board].

(3) All preparation, compounding, dispensing and repackaging of radiopharmaceuticals shall be pursuant to USP[United States Pharmacopeia (USP)] 825[, unless specified portions submitted by a pharmacist have been waived by the board].

(4) All non-sterile or sterile compounded preparations containing hazardous drugs shall be compounded pursuant to USP 800, unless specified portions submitted by a pharmacy have been waived by the board.

[(4) All written waiver requests submitted by a pharmacist shall be considered by the Board at its next regularly scheduled meeting.

(5) The board, upon a showing of good cause and in balancing the best interest of the public health, safety, and welfare, may waive the requirement of any specified portion of USP 795, 797 or 825-]

(5) Non-sterile and sterile preparations compounded for human use must:

(a) Comply with the standards of an applicable USP or National Formulary monograph; or

(b) Be compounded from a component of a human drug approved by the United States Food and Drug Administration (FDA); or

(c) Be compounded from a component that appears on the FDA's list of bulk drug substances that can be used in compounding.

(d) Not be essential copies of a commercially available drug product unless authorized by 21 U.S.C. 353(a).

Section 4.[Section 3-] Designated Person.

(1) The designated person of a[A] facility that compounds non-sterile or sterile preparations or prepares, compounds, dispenses or repackages radiopharmaceuticals shall be [managed by a pharmacist-in-charge (PIC) licensed to practice pharmacy in the Commonwealth and who is] knowledgeable in the specialized requirements[functions] of preparing and dispensing compounded [non-sterile and sterile] preparations[, including the principles of aseptic technique and quality assurance].

(2) The PIC shall be responsible for the appointment for any designated persons.[The PIC shall be responsible for the: purchasing, storage, compounding, repackaging, dispensing, distribution of all drugs and preparations, development and continuing review of all policies and procedures, training manuals, quality assurance programs, and participation in those aspects of the facility's patient care evaluation program relating to pharmaceutical material utilization and effectiveness.]

(3) The PIC shall be responsible to ensure any compounded preparation leaving the premises is shipped or delivered in a manner that maintains the integrity and stability of the preparation[may be assisted by additional pharmacy personnel adequately trained, to the satisfaction of the PIC, in this area of practice and for each product they will be compounding].

Section 5.[Section 4-] Dispensing and Labeling.

(1) The pharmacist shall receive a written, electronic, facsimile, or verbal prescription, or medical order from a prescriber before dispensing any compounded, non-sterile or sterile preparation. These prescriptions or medical orders shall contain the following:

(a) Patient's name and species, if not human;

(b) Patient's address on controlled substances prescriptions or location (room number);

(c) Drug name and strength;

(d) Directions for use;

(e) Date;

(f) Authorized prescriber's name;

(g) Prescriber's address and DEA number, if applicable;

(h) Refill or end date instructions, if applicable; and

(i) Dispensing quantity, if applicable.

(2) A pharmacist dispensing compounded preparations for veterinary use must follow the order requirements of 201 KAR 2:311.[A pharmacy-generated patient profile shall be maintained separate from the prescription file. The patient profile shall be maintained under the control of the PIC for a period of two (2) years following the last dispensing activity. In addition, a medication administration record (MAR) as part of the institutional record shall be retained for a period of five (5) years from date of the patient's discharge from the facility, or in the case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longer. Supplemental records may also be employed as necessary. The patient profile shall contain:

(a) Patient's name;

(b) Name of compounded preparation dispensed;

(c) Date dispensed;

(d) Drug content and quantity; and

(e) Patient's directions.]

(3) Each compounded preparation dispensed to patients shall be labeled with the following information:

(a) Name, address, and telephone number of the licensed pharmacy, if preparation[product] will leave the premises;

- (b) Date;
 - (c) Identifying number;
 - (d) Patient's full name;
 - (e) Name of each drug, strength, and amount;
 - (f) Directions for use, including infusion rate;
 - (g) Required controlled substances transfer warning[warnings], if applicable;
 - (h) Beyond use date;
 - (i) Identity of dispensing pharmacist;
 - (j) Storage requirements, if applicable; and
 - (k) Auxiliary labels, if applicable.
- (4) Verification of a compounded preparation shall be completed by a pharmacist after the preparation is compounded and prior to dispensing to the patient. Documentation of the verification shall include notation of each pharmacist who performs verification.

Section 6. Recordkeeping.

(1)[(4)] The PIC shall maintain access to and provide[submit, as appropriate, these] records and reports to the board or its agents upon request[as are required to ensure the patient's health, safety, and welfare]. Records shall be maintained and readily available for no less than five (5) years[, maintained for two (2) years at a facility not computerized, but for five (5) years at a facility utilizing computerized recordkeeping, and subject to inspection by the Board of Pharmacy or its agents].

(2) Records. Records[These] shall include the following:

- (a) Prescriptions or medical orders or requests for compounded preparations[Patient profile];
 - (b) Purchase records;
 - (c) Verification records[Biennial controlled substances inventories]; and
 - (d) [Policy and procedures manual;
 - (e) Policies and procedures for hazardous wastes, if applicable;
 - (f) Quality assurance records; and
 - (g) Other records and reports as [may be] required by USP 795, 797, 800, and 825, state and federal law, and administrative regulations of the Kentucky Board of Pharmacy[KRS 247 or 315 and 201 KAR Chapter 2].
- [(5) Information regarding individual patients shall be maintained in a manner to assure confidentiality of the patient's records. Release of this information shall be in accordance with federal and state laws.
- (6) The PIC shall be responsible for the environmental control of all products shipped. Any compounded product that is frozen or requires refrigeration shall be shipped or delivered to a patient in appropriate temperature controlled delivery containers, if the product leaves the premises.
- (7) The PIC shall be responsible for assuring that there is a system for the disposal of hazardous waste in a manner that does not endanger the public health.

Section 5. Hazardous Drugs.

- (1) All non-sterile preparations that contain hazardous substances shall be compounded pursuant to USP 795.
- (2) All sterile compounded preparations that contain hazardous substances shall be compounded pursuant to USP 797.]

Section 7.[Section 6.] Violations. Violation of any provision of this administrative regulation shall constitute unethical or unprofessional conduct in accordance with KRS 315.121.

Section 8. Waivers.

- (1) All written waiver requests submitted by a pharmacy shall be considered by the Board at its next regularly scheduled meeting.
- (2) The board, upon a showing of good cause and in balancing the best interest of the public health, safety and welfare, may waive the requirement of any specified portion of USP 795, 797, 800 or 825 or any provision of this regulation. Any waiver issued shall identify with specificity the pharmacy to which it applies and the provisions of law for which the waiver is applied.

Section 9. Enforcement Discretion.

(1) The Board shall not enforce the provisions of this regulatory amendment requiring compliance with the 2022 revisions to USP Chapters USP 795 and 797 until January 1, 2026. Until January 1, 2026, the 2014 revision of USP 795 will be enforced and the 2008 revision of USP 797 will be enforced. USP 800 will not be enforced until January 1, 2026.

(2) The addition of flavoring to a commercially available drug shall not be considered non-sterile compounding, if the additive:

- (a) Is non-expired, inert, nonallergenic, and produces no effect other than the instillation or modification of flavor; and
- (b) Is not greater than five (5) percent of the drug product's total volume.

Section 10.[Section 7.] Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "USP 795, Revision Bulletin, Official", November 1, 2022[January 1, 2014];
- (b) "USP 797, Revision Bulletin, Official", November 1, 2022[June 1, 2008]; and
- (c) "USP 825, Revision Bulletin, Official, Official", December 1, 2020[-]; and
- (d) "USP 800, Revision Bulletin", December 1, 2020.

(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. through 4:30 p.m. This material is also available on the board's Web site at <https://pharmacy.ky.gov/statutesandregulations/Pages/default.aspx>.

CHRISTOPHER HARLOW, Executive Director

APPROVED BY AGENCY: June 7, 2023

FILED WITH LRC: June 7, 2023 at 1:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 30, 2023, at 10:00 a.m. Eastern Time via zoom teleconference. 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. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023. 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 requirements for compounding non-sterile and sterile preparations, and the preparation, compounding, dispensing and repackaging of radiopharmaceuticals.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with federal regulation and to establish the requirements for compounding non-sterile and sterile preparations, and the preparation, compounding, dispensing and repackaging of radiopharmaceuticals.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 315.035(6) authorizes the Board of Pharmacy to promulgate administrative regulations to assure minimum standards of practice of compounding by pharmacies and

pharmacists, and to assure the safety of all products provided to the citizens of the Commonwealth. This administrative regulation relates to the requirements for compounding non-sterile and sterile preparations, and the preparation, compounding, dispensing and repackaging of radiopharmaceuticals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements for compounding non-sterile and sterile preparations, and the preparation, compounding, dispensing and repackaging of radiopharmaceuticals. This administrative regulation assures minimum standards of practice of compounding by pharmacies and pharmacists are established and assures the safety of all products provided to citizens of the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: This amendment conforms to the updated USP chapters, which are required under federal regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with federal regulation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 315.035(6) authorizes the Board of Pharmacy to promulgate administrative regulations to assure minimum standards of practice of compounding by pharmacies and pharmacists, and to assure the safety of all products provided to the citizens of the Commonwealth. This amendment assures minimum standards of practice of compounding by pharmacies and pharmacists are established.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assures minimum standards of practice of compounding by pharmacies and pharmacists are established.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts pharmacists and pharmacies.

(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 provides pharmacists and pharmacies with the requirements for compounding non-sterile and sterile preparations, and the preparation, compounding, dispensing and repackaging of radiopharmaceuticals. If engaging in the practice of compounding, pharmacists and pharmacies shall meet the requirements set forth in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Pharmacists and pharmacies will incur no costs in complying with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The ability to engage in the practice of compounding in a manner that assures the safety of all products provided to the citizens of the Commonwealth.

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Board of Pharmacy will inspect pharmacies and pharmacist practice to ensure compliance with this administrative regulation. The Board of Pharmacy already employs inspectors, and this regulation will not increase any cost of enforcement for the Board of Pharmacy.

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

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

(9) TIERING: Is tiering applied? No. Tiering is not applied, as this administrative regulation establishes the minimum standards the requirements for compounding non-sterile and sterile preparations, and the preparation, compounding, dispensing and repackaging of radiopharmaceuticals, it simply provides the requirements for the practice of compounding.

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? There will be no impact on local or state government outside of the Board of Pharmacy's enforcement of the regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.020(1), 315.035(6), 315.0351, 315.191(1)(a) and (g), and 21 U.S.C 353(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. There will be no effect on the expenditures and revenue of a state or local government agency.

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

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

(c) How much will it cost to administer this program for the first year? There will be no cost to administer this administrative regulation. The cost of educating pharmacists and having pharmacist inspectors provide guidance is built into the employment cost for those staff members.

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

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: This regulation will not create additional costs for the agency.

(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? There will be no impact on the expenditures or cost savings of the regulated entities. Pharmacies will have to come into compliance with USP 795, 797 and 800 respectively. This can take significant time and expenditure, and that is why the Board has built in a period of enforcement discretion.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There will be no impact on the expenditures or cost savings of regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no impact on the expenditures or cost savings of regulated entities.

(c) How much will it cost the regulated entities for the first year? Regulated entities that are not in compliance with the federal standard will need to come into compliance, and installing the appropriate mechanisms to be in compliance could cost regulated entities a significant sum, and that is why the Board is building in a period of enforcement discretion. During that period, the state will not

enforce to the new standard, but the FDA could still come in and they will be inspecting to the new standard despite the state's exercise of enforcement discretion.

(d) How much will it cost the regulated entities for subsequent years? There will be no impact on the expenditures or cost savings of regulated entities. Once regulated entities come into compliance, there will be no further cost 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 (+/-): 0

Expenditures (+/-): not uniform, cannot be quantified.

Other Explanation: This regulation does require pharmacies to come into compliance with USP 795, 797 and 800, depending on the type of compounding they are performing. It is our understanding that for some pharmacies, this will be costly. This is why the Board does not plan on enforcing the standards until 2026.

(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. 21 U.S.C. 353A.

(2) State compliance standards. 21 U.S.C. 353A is section 503A of the federal Food, Drug and Cosmetic Act. This section of law creates federal floor requirements for pharmacies that are compounding drugs. This regulatory amendment ensures congruence with 21 U.S.C. 353A.

(3) Minimum or uniform standards contained in the federal mandate. 21 U.S.C. 353A requires non-sterile compounding to follow USP Chapter 795, sterile compounding to follow USP Chapter 797 and hazardous drug compounding to follow USP 800. Moreover, 21 U.S.C. 353A prohibits the compounding of a commercially available drug unless certain requirements are met. This amendment includes the same regulatory language as 21 U.S.C. 353A.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, this regulatory amendment only imposes the floor requirement of the federal rule.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable because we have only adopted the federal minimum standard.

BOARDS AND COMMISSIONS

Board of Pharmacy (Amendment)

201 KAR 2:105. Requirements for wholesalers, medical gas wholesalers, wholesale distributors, and virtual wholesale distributors.

RELATES TO: KRS 315.010, 315.121, 315.350, 315.400, 315.402, 315.404, 315.406, 315.408, 315.410, 315.412

STATUTORY AUTHORITY: KRS 315.010, 315.191(1)(a), 315.350, 315.402, 315.406

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations to regulate and control all matters set forth in KRS Chapter 315. KRS 315.350, 315.402 and 315.406 require the board to promulgate administrative regulations to regulate wholesalers, medical gas wholesalers, wholesale distributors, and virtual wholesale distributors of prescription drugs and drug-related devices. This administrative regulation establishes the requirements for the regulation of wholesalers, medical gas

wholesalers, wholesale distributors, and virtual wholesale distributors.

Section 1. Definitions.

(1) "Component" means any raw material, ingredient, or article intended for use in the manufacture of a drug and drug-related device.

(2) "Distribution" or "distribute" is defined by KRS 315.400(5).

(3) "Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.

(4) "Illegitimate Product" is defined by KRS 315.400(11).

(5) "Medical gas wholesaler" is defined by KRS 315.400(13).

(6) "Product" means a prescription drug in a finished dosage form for administration to a patient without substantial further manufacturing, such as capsules, tablets, and lyophilized products before reconstitution.

(7) "Suspect product" means a component, prescription drug, or drug-related device for which there is reason to believe that such component, prescription drug, or drug-related device:

(a) Is potentially counterfeit, diverted, or stolen;

(b) Is potentially intentionally adulterated such that the component, prescription drug, or drug-related device would result in serious adverse health consequences or death to humans or animals;

(c) Is potentially the subject of a fraudulent transaction; or

(d) Appears otherwise unfit for distribution such that the component, prescription drug, or drug-related device would result in serious adverse health consequences or death to humans or animals.

(8) "Wholesale distribution" is defined by KRS 315.400(20).

(9) "Wholesale distributor" is defined by KRS 315.400(21).

(10) "Wholesaler" is defined by KRS 315.010(28), and includes medical gas wholesalers, wholesale distributors, and virtual wholesale distributors.

(11) "Virtual wholesale distributor" has the same meaning given in KRS 315.400(21).

Section 2. Requirements.

(1) A wholesaler engaged in wholesale distribution in the Commonwealth shall apply for a license from the Board of Pharmacy in accordance with KRS 315.350, 315.402, 315.406, and this administrative regulation.

(2) A surety bond is required of not less than \$25,000, or other equivalent means of security acceptable to the Board of Pharmacy or a third party recognized by the Board of Pharmacy such as insurance, an irrevocable letter of credit, or funds deposited in a trust account or financial institution. This shall be used to secure payment of any administrative penalties imposed by the Board of Pharmacy and any fees or costs incurred by the Board of Pharmacy regarding that licensee if those penalties, fees, or costs are authorized under state law, and the licensee fails to pay thirty (30) days after the penalty, fee, or costs becomes final. A separate surety bond or other equivalent means of security is not required for each company's separate locations or for affiliated companies or groups[or groups] if separate locations or affiliated companies or groups[or groups] are required to apply for or renew their wholesaler license with the Board of Pharmacy. The Board of Pharmacy may make a claim against the bond or other equivalent means of security until one (1) year after the wholesaler's license closes, lapses or expires, or until sixty (60) days after any administrative or legal proceeding before or on behalf of the Board of Pharmacy that involves the wholesaler is concluded, including any appeal, whichever occurs later. The Board of Pharmacy may waive the bond requirement, if the wholesaler:

(a) Has previously obtained a comparable surety bond or other equivalent means of security for the purpose of licensure in another state, where the wholesaler possesses a valid license in good standing;

(b) Is a publicly held company;

(c) Is a medical gas wholesaler; or

(d) Has a license for the sole purpose of distribution within a health care entity under common ownership.

(3) A separate license shall be required for each wholesaler's facility that engages in wholesale distribution within the Commonwealth regardless of whether joint ownership or control exists.

(4) An agent or employee of a licensee shall not be required to obtain a license under this section if the agent or employee is acting in the usual course of business or employment.

(5) A license shall not be issued or renewed unless the applicant demonstrates or continues to demonstrate acceptable operational procedures, including:

(a) Adequate operational, maintenance, and storage conditions to ensure proper lighting, ventilation, temperature and humidity control, sanitation, space, and security as per label requirements or official United States Pharmacopoeia (USP) compendium requirements, USP Chapter 659, Packaging and Storage Requirements. Appropriate manual, electromechanical or electronic temperature and humidity recording equipment, devices, or logs shall be utilized to document proper storage of prescription drugs and drug-related devices;

(b) Separation and quarantine of deteriorated, damaged, outdated, misbranded, adulterated or otherwise recalled prescription drugs and drug-related devices until they are destroyed or returned;

(c) Providing accurate and precise records of all prescription drugs and drug-related devices sold, purchased, traded, delivered, handled, stored, or received and any other information pertinent to the distribution or disposition; and

(d) Providing proof of registration with the U.S. Drug Enforcement Administration (DEA) and shall comply with all DEA regulations, if applicable.

(6) Wholesale distributors and virtual wholesale distributors shall comply with all requirements outlined in the Drug Supply Chain Security Act (DSCSA), 21 U.S.C. 360eee-360eee-4.

(7) Wholesalers shall establish a system to:

(a) Quarantine and investigate suspect product to determine if it is illegitimate; and

(b) Notify U.S. Food and Drug Administration (FDA), if applicable, the Board of Pharmacy and recipient(s) of illegitimate product, if illegitimate product is found.

(8) A virtual wholesale distributor shall be exempt from the following, subsection 2(5)(a) and (b) of this Section, and Section 5(1)(a) and (b), and (2)(a) and (b) of this administrative regulation.

Section 3. Qualifications for License.

(1) The Board of Pharmacy shall consider, at a minimum, the following factors in reviewing the qualifications of persons who engage in wholesale distribution of prescription drugs and drug-related devices within the Commonwealth:

(a) Any convictions of the applicant under any federal, state, or local laws relating to drugs, including drug samples and controlled substances;

(b) Any felony convictions of the applicant under federal, state, or local laws;

(c) The applicant's past experience in the distribution of prescription drugs and drug-related devices, including drug samples and controlled substances;

(d) The furnishing by the applicant of false or fraudulent material in any application made in connection with the distribution of prescription drugs and drug-related devices;

(e) Suspension or revocation by federal, state, or local government of any license or permit currently or previously held by the applicant for distribution of any prescription drugs and drug-related devices, including drug samples and controlled substances;

(f) Compliance with the requirements under any previously granted license or permit, if any; and

(g) Compliance with requirements to maintain or make available to the Board of Pharmacy or to federal, state, or local law enforcement officials those records required under this administrative regulation.

(2) The Board of Pharmacy shall have the right to deny a license to an applicant if it determines that the granting of that license would not be in the public interest based on health and safety considerations.

(3) A license shall not be issued pursuant to this administrative regulation unless the applicant has furnished proof satisfactory to the Board of Pharmacy:

(a) That the applicant is in compliance with all applicable federal, state, and local laws and regulations relating to drugs; and

(b) That the applicant is equipped as to land, buildings, and security to properly carry on the business described in the application.

(4) A license issued pursuant to this administrative regulation failing to comply with the provisions of KRS 315.350, 315.400, 315.402, 315.404, 315.406, 315.408, 315.410, 315.412, or this administrative regulation may result in action under KRS 315.121.

Section 4. Application, Fees, Renewals.

(1) An application for a license shall be submitted to the Board of Pharmacy on the Application for a License to Operate as a Wholesaler.

(2) An application shall be accompanied by the annual fee set forth in 201 KAR 2:050.

(3) An application shall include:

(a) The name, full business address, and telephone number of the licensee;

(b) All trade or business names used by the licensee;

(c) Addresses, telephone numbers, and the names of contract persons for all facilities used by the licensee for the storage, handling, and distribution of prescription drugs and drug-related devices;

(d) The type of ownership or operation (i.e. partnership, corporation, or sole proprietorship);

(e) The name(s) of the owner and operator of the licensee, including:

1. If a person, the name and Social Security number of the person;

2. If a partnership, the name and Social Security number of each partner, and the name of the partnership;

3. If a corporation, the name, Social Security number and title of each corporate officer and director, the corporate names, and the name of the state of incorporation; and

4. If a sole proprietorship, the full name and Social Security number of the sole proprietor and the name of the business entity;

(f) A list of all licenses and permits issued to the applicant by any other state that authorizes the applicant to purchase or possess prescription drugs and drug-related devices; and

(g) Proof of surety bond or equivalent.

(4) All licenses shall:

(a) Expire on September 30 following date of issuance; and

(b) Be renewable annually thereafter upon submission of the Renewal Application to Operate as a Wholesaler accompanied by the renewal fee set forth in 201 KAR 2:050 and shall be nontransferable.

Section 5. Standards.

(1) Facilities.

(a) All facilities in which prescription drugs and drug-related devices are held for wholesale distribution, stored, sold, offered for sale, exposed for sale, or kept for sale shall be of suitable size, construction, and location to facilitate cleaning, maintenance, and proper operations.

(b) All facilities shall meet all applicable federal, state, and local standards. The facility shall quarantine prescription drugs and drug-related devices that are outdated, damaged, deteriorated, misbranded, recalled, or adulterated, or that are in immediate or sealed secondary containers that have been opened.

(c) A facility shall not be located in a residence.

(d) A facility shall be located apart and separate from a pharmacy permitted by the Board of Pharmacy, with the exception of a medical gas wholesaler.

(2) Security.

(a) A wholesaler shall be equipped with an alarm system to detect entry after hours.

(b) A wholesaler shall ensure that access from outside their premises is well controlled and reduced to a minimum. This includes the installation of adequate lighting at the outside

perimeter of the premises.

(c) Internal security policies shall be developed to provide reasonable protection against theft and diversion by limiting access to areas where prescription drugs and drug-related devices are held to authorized personnel. These policies shall provide protection against tampering with computers or electronic records.

(d) A licensee shall employ adequate personnel with the education and experience necessary to safely and lawfully engage in the wholesale distribution of prescription drugs and drug-related devices.

(3) Recordkeeping requirements for companies handling prescription drugs and drug-related devices exempt from the DSCSA.

(a) Inventories and other records regarding the receipt and distribution or disposition of prescription drugs and drug-related devices shall be maintained and readily available for inspection or photocopying by the Board of Pharmacy and authorized law enforcement officials for a period of six (6) years). These records shall include:

1. The proprietary and established name of the prescription drug and related device, if applicable;
2. The dosage, if applicable;
3. The size of the container, if applicable;
4. The number of containers;
5. The lot number or control number of the prescription drug and related device, if applicable;
6. The business name and address of all parties involved in each receipt and distribution or disposition of the prescription drug and related device, starting with the manufacturer; and
7. The date of each receipt and distribution or disposition of the prescription drug and related device.

(b) Records described in this section that are kept at the inspection site or that can be readily retrievable within forty-eight (48) hours by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two (2) working days of a request by the Board of Pharmacy or an authorized official of a federal, state, or local law enforcement agency.

(c) Wholesalers shall maintain an ongoing list of verified persons or businesses with whom they do business.

(d) A wholesaler may sell or distribute prescription drugs and drug-related devices only to the following, except as provided in KRS 315.0351(2) and 315.404:

1. A currently licensed wholesaler;
2. A currently licensed third party logistics provider;
3. A currently permitted pharmacy;
4. A currently licensed outsourcing facility;
5. A currently licensed practitioner;
6. A currently permitted repackager;
7. A currently licensed hospital, but only for use by or in that hospital pursuant to KRS 217.182(1);
8. A person in charge of a laboratory, but only for use in that laboratory for scientific and medical research purposes pursuant to KRS 217.182(1); or
9. Any other appropriately licensed or permitted facility in the jurisdiction in which it is located.

(e) A wholesaler may acquire prescription drugs and drug-related devices only from the following, except as provided in KRS 315.404:

1. A currently permitted manufacturer;
2. A currently permitted repackager;
3. A currently licensed wholesaler; or
4. A currently licensed third-party logistics provider.

(f) Wholesalers shall maintain a system for the mandatory reporting of any theft, suspected theft, diversion, or other significant loss of any prescription drug and related device to the Board of Pharmacy, and if applicable, the FDA and DEA.

(4) Written policies and procedures, requirements for companies handling prescription drugs and drug-related devices exempt from the DSCSA.

(a) A wholesaler shall establish, maintain, and adhere to

written policies and procedures, which shall be followed for the receipt, security, storage, inventory, distribution, and disposition of prescription drugs and drug-related devices

(b) There shall be written policies and procedures for identifying, recording, and reporting losses or thefts.

(c) There shall be written policies and procedures to assure that the wholesaler prepares for, protects against, and handles crisis situations that affect the security or operation of the facility. These crises shall include fires, floods, or other natural disasters, and situations of local, state, or national emergency.

(d) There shall be written policies and procedures for managing and correcting all errors or inaccuracies in inventories.

(e) There shall be written policies and procedures to assure that any outdated stock or any stock with an expiration date that, in the wholesaler's view, does not allow sufficient time for repacking or resale shall be segregated from other stock and shall be prepared for return to the manufacturer or otherwise destroyed, and this shall be documented.

(f) There shall be written policies and procedures by which the wholesaler exercises control over the shipping and receiving of all stock within the operation.

(g) There shall be written policies and procedures for investigating suspect product and reporting illegitimate product to the Board of Pharmacy and the FDA pursuant to the DSCSA, if applicable.

(5) Returned, damaged, and outdated prescription drugs and drug-related devices. A wholesaler shall maintain and follow a written policy and procedure to assure the proper handling and disposal of returned goods. If conditions under which a prescription drug or related device has been returned cast doubt on the drug's safety, identity, strength, quality, or purity, then the drug or related device shall be destroyed, or returned, unless examination, testing, or other investigation proves that the drug or drug-related device meets appropriate standards of safety, identity, strength, quality, and purity. In determining whether the conditions under which a prescription drug or related device has been returned cast doubt on the drug's or related device's safety, identity, strength, quality, or purity, the wholesaler shall consider, among other things, the conditions under which the drug or related device has been held, stored, or shipped before or during its return and the condition of the drug or related device and its container, carton, or labeling, as a result of storage or shipping.

(6) Handling recalls. A wholesaler shall establish, maintain, and adhere to a written policy and procedure for handling recalls and withdrawals of prescription drugs and drug-related devices. The policy and procedure shall cover all recalls and withdrawals of drugs and drug-related devices due to:

- (a) Any voluntary action on the part of the manufacturer;
 - (b) The direction of the FDA, or any other federal, state, or local government agency; and
 - (c) Replacement of existing.
- (7) Procedures

(a) A visual examination of all materials received or shipped shall be made to guarantee product identity and to reasonably guard against acceptance or delivery of damaged, contaminated, tampered, or otherwise unfit stock.

(b) Procedures for distribution of approved stock shall provide for a rotation whereby the expiration date is taken into consideration when distributing inventory.

(c) A wholesaler shall be subject to the provisions of any applicable federal, state, or local laws or regulations that relate to prescription drug and related device salvaging or reprocessing.

Section 6. Violations.

(1) A wholesaler shall not distribute prescription drugs and drug-related devices directly to a consumer or a patient, except as provided in KRS 315.0351(2).

(2) A wholesaler shall not operate in a manner that endangers the public health.

(3) Violations of any of these provisions shall be grounds for action under KRS 315.121.

Section 7. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for a License to Operate as a Wholesaler", June 2023[May-2020];

(b) "Renewal Application to Operate as a Wholesaler", June 2023[May-2020]; and

(c) "USP Chapter 659 Packaging and Storage Requirements", April 1, 2021[November 1, 2020].

(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 40601-8024. Monday through Friday, 8 a.m. to 4:30 p.m. or on the Board's website at <https://pharmacy.ky.gov/Businesses/Pages/Wholesale-Distributors.aspx>.

CHRISTOPHER P. HARLOW, Executive Director

APPROVED BY AGENCY: June 7, 2023

FILED WITH LRC: June 7, 2023 at 1:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 30, 2023, at 10:00 a.m. Eastern Time via zoom teleconference. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023. 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 requirements for the regulation of wholesalers, medical gas wholesalers, wholesale distributors and virtual wholesale distributors.

(b) The necessity of this administrative regulation: KRS 315.191(1)(a) authorizes the Board of Pharmacy to promulgate administrative regulations with minimum requirements for the permitting of those entities that provide pharmacy services. This administrative regulation establishes the requirements for the regulation of wholesalers, medical gas wholesalers, wholesale distributors and virtual wholesale distributors.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements for the regulation of wholesalers, medical gas wholesalers, wholesale distributors and virtual wholesale distributors.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Retitle this regulation and cleanup language to be consistent with Federal Regulations.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: How the amendment will change this existing administrative regulation: This amendment only amends the application and fee listed there.

(a) The necessity of the amendment to this administrative regulation: The criteria needed to be updated.(b) How the amendment conforms to the content of the authorizing statutes: KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations pertaining to pharmacists and pharmacies. The

amendment ensures that the appropriate amount is listed in the applications.

(b) How the amendment will assist in the effective administration of the statutes: The amendment will further promote, preserve, and protect public health through effective the correct fee amount being listed in the application.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is only to the applications, and the amendment is required to align with proposed changes to 201 KAR 2:050.

(d) How the amendment will assist in the effective administration of the statutes? The amendment is necessary to ensure that the regulation is aligned with the Board's fee regulation, 201 KAR 2:050.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates pharmacies and pharmacists will be affected minimally by this regulation amendment. Wholesalers will be impacted.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Pharmacies and pharmacists will have to familiarize themselves with amended language. The board will help to educate regulated entities about these changes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Due to the amendment to the fee amount in the form pursuant to 201 KAR 2:050, it will cost wholesalers an additional \$25 per year in their licensing fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will ensure robust regulation and quick administrative turn-around.

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

(a) Initially: There will be no costs incurred.

(b) On a continuing basis: There will be no costs 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: The fee for wholesale distributor permit will be increased by \$25.00 in 201 KAR 2:050.

(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 directly, but references in the forms a fee increase from 201 KAR 2:050.

(9) TIERING: Is tiering applied? No. Tiering is not applied because the regulation is applicable to all entities wishing to distribute pharmaceuticals 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 Kentucky Board of Pharmacy will be the only entity impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.191(1)(a).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is estimated this administrative regulation will generate an annual increase in

revenue in the amount of \$106,800.00 for the Board in the first year. This regulation does not directly create a fee, but the application incorporated by reference does include a fee, as authorized in 201 KAR 2:050.

(b) How 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 estimated this administrative regulation will generate an annual increase in revenue in the amount of \$106,800.00 for the Board in the first year. This regulation does not directly create a fee, but the application incorporated by reference does include a fee, as authorized in 201 KAR 2:050.

(c) How much will it cost to administer this program for the first year? The administrative costs to administer this program include application processing, inspections, and general regulatory inquiries.

(d) How much will it cost to administer this program for subsequent years? The administrative costs to administer this program include application processing, inspections, and general regulatory inquiries.

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

Revenues (+/-): proposed amendment will provide an annual \$106,800 increase in revenue

Expenditures (+/-): -\$106,800, cost of ensuring compliance of license holder.

Other Explanation: n/a

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? None

(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? \$150 annually.

(d) How much will it cost the regulated entities for subsequent years? \$150 annually.

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 (+/-): -\$150 annually

Other Explanation: This is the cost of the annual permit.

(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 regulation does not have major economic impact.

BOARDS AND COMMISSIONS

Board of Pharmacy

(Amendment)

201 KAR 2:205. Pharmacist-in-charge.

RELATES TO: KRS 315.020, [315.035,]315.0351, 315.191, 315.300, 315.335

STATUTORY AUTHORITY: KRS 315.020(1), 315.0351, 315.191(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1) authorizes the board to promulgate administrative regulations pursuant to KRS Chapter 13A necessary to regulate and control all matters relating to pharmacists, pharmacist interns, pharmacy technicians, pharmacies, wholesale distributors, and manufacturers. KRS 315.020(1) and 315.0351(1)(g) require applicants for pharmacy permits to place a pharmacist in charge as a prerequisite to compounding and dispensing privileges granted by the Kentucky Board of Pharmacy. This administrative regulation

establishes the requirements relating to a pharmacist-in-charge.

Section 1. Definition. "Pharmacist-in-charge" means a pharmacist licensed in the Commonwealth of Kentucky, who accepts responsibility for the operation of a pharmacy in conformance with all laws and administrative regulations pertinent to the practice of pharmacy and the distribution of prescription drugs and who is personally in full and actual charge of the pharmacy.

Section 2. Duties and Responsibilities.

(1) The pharmacist-in-charge shall be so designated in the Application for Permit to Operate a Pharmacy in Kentucky and in the Application for Non-Resident Pharmacy Permit, and in each Application for Resident Pharmacy Renewal and Application for Non-Resident Pharmacy Permit Renewal submitted for the renewal of that permit thereafter.

(2) A pharmacist shall not serve as a pharmacist-in-charge:

(a) For more than one (1) pharmacy at a time, except upon written approval from the Kentucky Board of Pharmacy; and

(b) Unless he or she is physically present in that pharmacy for a minimum of ten (10) hours per week or the amount of time appropriate to provide supervision and control.

(3) The pharmacist-in-charge shall be responsible for:

(a) Quality assurance programs for pharmacy services designed to objectively and systematically monitor care, pursue opportunities for improvement, resolve identified problems as may exist, and detect and prevent drug diversion;

(b) The procurement, storage, security, and disposition of drugs and the provision of pharmacy services;

(c) Assuring that all pharmacists and interns employed by the pharmacy are currently licensed;

(d) Providing notification in writing to the Board of Pharmacy within fourteen (14) calendar days of any change in the:

1. Employment of the pharmacist-in-charge;

2. Employment of staff pharmacists; or

3. Schedule of hours for the pharmacy;

(e) Making or filing of any reports required by state or federal laws and regulations;

(f) Responding to the Kentucky Board of Pharmacy regarding identified violations or deficiencies; and

(g) Filing of any report of a theft or loss to:

1. The U. S. Department of Justice Drug Enforcement Agency as required by 21 C.F.R. 1301.76(b);

2. The Department of the Kentucky State Police as required by KRS 315.335; and

3. The board by providing a copy to the board of each report submitted.

[Section 3. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Permit to Operate a Pharmacy in Kentucky" Form 1, 5/2020;

(b) "Application for Non-Resident Pharmacy Permit", Form 3, 5/2020;

(c) "Application for Resident Pharmacy Renewal", Form 2, 5/2020; and

(d) "Application for Non-Resident Pharmacy Permit Renewal", Form 4, 5/2020.

(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 40604, 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/Businesses/Pages/Pharmacy.aspx>.]

CHRISTOPHER HARLOW, Pharm.D., Executive Director

APPROVED BY AGENCY: June 7, 2023

FILED WITH LRC: June 7, 2023 at 1:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 30, 2023, at 10:00 a.m. Eastern Time via zoom teleconference. Individuals interested in being heard at this hearing

shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023. 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 requirements for the pharmacist-in-charge at pharmacies permitted by the Kentucky Board of Pharmacy.

(b) The necessity of this administrative regulation: KRS 315.191(1)(a) authorizes the Board of Pharmacy to promulgate administrative regulations necessary to regulate and control all matters relating to pharmacists and pharmacies. KRS 315.020(1) and KRS 315.0351(7) require applicants for pharmacy permits to place a pharmacist in charge as a prerequisite to compounding and dispensing privileges granted by the Board of Pharmacy. This regulation dictates the responsibilities of a pharmacist-in-charge.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements for the pharmacist-in-charge at pharmacies permitted by the Kentucky Board of Pharmacy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is essential for dispensing and compounding pharmacies to function. Pharmacist-in-charge requirements are established by this 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 only change is the removal of the applications incorporated by reference.

(b) The necessity of the amendment to this administrative regulation. Because the applications for pharmacies were incorporated by reference and those applications are more fitting attached to 201 KAR 2:050, they need to be deleted from this regulation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations pertaining to pharmacists and pharmacies. The only amendment made is the removal of the applications

(d) How the amendment will assist in the effective administration of the statutes: The amendment will further promote, preserve, and protect public health through effective regulation of pharmacists and pharmacies by moving the pharmacy applications to a more relevant location for incorporation by reference.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There will be no impact on any of these entities.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative

regulation or amendment: No changes to the substance of this regulation with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will remove the applications incorporated by reference only.

(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 is necessary in this 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 the regulation is applicable to all pharmacies that desire approval for a resident pharmacy permit or a non-resident pharmacy permit.

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. 315.020, 315.035, 315.0351, 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. None.

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? 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 the first year.

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

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: This regulation will not impact fees, revenues or expenditures.

(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? In effect already. Permit fee is established by 201 KAR 2:050.

(d) How much will it cost the regulated entities for subsequent years? Renewal permit fee is set by 201 KAR 2:050.

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. [KRS13A.010(13)] There is no major economic impact from this amendment.

BOARDS AND COMMISSIONS

Board of Pharmacy (Amendment)

201 KAR 2:225. Special limited pharmacy permit – Medical gas.

RELATES TO: KRS 217.015(11), 315.010(9), 315.020, 315.035, 315.191(1)(a)

STATUTORY AUTHORITY: KRS 315.020, 315.035, 315.191(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations to regulate and control all matters set forth in KRS Chapter 315 relating to pharmacists and pharmacies. This administrative regulation establishes, consistent with the requirements of KRS 315.191(1)(a), minimum requirements for the permitting of those entities that distribute medical gases.

Section 1. Definitions. (1) "Medical gases" means gases (including liquefied gases) classified by FDA as drugs or devices that are used for medical applications and which may be stored and administered through the use of Medical Gas Related Equipment, which may or may not be required under Federal or State law for the immediate container to bear the label, "Rx only" or "Caution: Federal or State law prohibits dispensing without a prescription."

(2) "Special limited pharmacy permit" means a permit issued to a pharmacy that provides miscellaneous specialized pharmacy service and functions.

Section 2. General Requirements. (1)(a) An applicant for a special limited pharmacy permit for medical gases shall comply with the requirements of 201 KAR 2:180, except Section 5 and 201 KAR 2:205, except that the pharmacist-in-charge designated on the special permit shall be exempt from the requirements of 201 KAR 2:205, Section 2(2).

(b) The pharmacist-in-charge shall review the records and do an onsite visit of the special limited pharmacy permit [applicant] for medical gases not less than once each quarter.

(2) An applicant for a special limited pharmacy permit for medical gases shall prepare and adopt a policy and procedures manual that sets forth a detailed description of how the:

(a) Operation will comply with applicable federal, state, or local laws or administrative regulations; and

(b) Licensee will maintain the premises so that the medical gas remains secure and complies with applicable compendial monographs of official pharmacopoeias.

(3) An applicant for a special limited pharmacy permit for medical ~~gas~~[gases] shall be inspected by the board prior to the issuance of the license.

Section 3. Qualifications for License. (1) The board shall consider the following in reviewing the qualifications of an applicant for a special limited pharmacy permit for medical gases:

(a) The applicant's experience in the sale or distribution of prescription drugs, including controlled substances;

(b) A felony conviction of the applicant under federal, state, or local laws;

(c) The furnishing by the applicant of false or fraudulent material in a previous application for:

1. A special limited pharmacy permit for medical gases; or

2. A federal or state medical assistance program;

(d) Suspension or revocation of an applicant's license or permit by federal, state, or local government; and

(e) Compliance with requirements under a previously granted license or permit.

(2) The board shall deny an application for a special limited pharmacy permit for medical gases, if an applicant has:

(a) Been convicted for a violation of federal, state, or local laws relating to:

1. The practice of pharmacy;

2. Drugs; or

3. Federal or state medical assistance programs.

(b) Furnished false or fraudulent material in the application for a special limited pharmacy permit for medical gases;

(c) Failed to maintain or make available required records to the:

1. Board; or

2. Federal, state, or local law enforcement officials;

(d) Failed to comply with applicable federal, state, and local laws and regulations relating to medical gas; or

(e) Failed to provide appropriate land, buildings, and security necessary to properly carry on the business described in his application.

Section 4. License Fees; Renewals. An applicant shall submit:

(1) An initial or renewal application for a special limited pharmacy permit for medical gases on either the Application for Special Limited Pharmacy Permit – Medical Gas or the Application for Special Limited Pharmacy Permit – Medical Gas Renewal; and

(2) As appropriate, the:

(a) Initial application fee established by 201 KAR 2:050, Section 1(8); or

(b) Renewal fee established by 201 KAR 2:050, Section 1(9).

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Special Limited Pharmacy Permit – Medical Gas", ~~June 2023~~[March 2022]; and

(b) "Application for Special Limited Pharmacy Permit – Medical Gas Renewal", ~~June 2023~~[March 2022].

(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 40601-8204, 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/Businesses/Pages/Pharmacy.aspx>[~~https://pharmacy.ky.gov/Forms/Pages/default.aspx~~].

CHRISTOPHER HARLOW, Pharm.D., Executive Director

APPROVED BY AGENCY: June 7, 2023

FILED WITH LRC: June 7, 2023 at 1:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 30, 2023, at 10:00 a.m. Eastern Time via zoom teleconference. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023. 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 requirements for the special limited pharmacy permit for medical gas.

(b) The necessity of this administrative regulation: KRS 315.191(1)(a) authorizes the Board of Pharmacy to promulgate administrative regulations with minimum requirements for the permitting of those entities that provide non-dispensing pharmacy services. This administrative regulation establishes the requirements for the special limited pharmacy permit medical gas.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements for the special limited pharmacy permit medical gas.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes criteria for a permit for medical gas since the regulation of medical gas is different from other prescription drugs.

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

(a) How the amendment will change this existing administrative regulation: This amendment only changes the forms incorporated by reference due to a proposed fee change in 201 KAR 2:050.

(b) The necessity of the amendment to this administrative regulation: The forms needed to be congruent with 201 KAR 2:050.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations pertaining to pharmacists and pharmacies.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will further promote, preserve, and protect public health through effective regulation of pharmacists and pharmacies by ensuring the forms comply with the provisions in the law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates pharmacies and pharmacists will be affected minimally 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: Pharmacies and pharmacists will have to familiarize themselves with amended language. The board will help to educate pharmacists and pharmacies in these changes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The only fee is for the application for the permit and renewal of the permit. This includes a proposed \$150 fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Quicker turn-around of applications and questions of the board.

(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: This regulation does not directly increase fees but 201 KAR 2:050 does increase the fee by fifty-dollars.

(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 directly but 201 KAR 2:050 does increase the fee by \$25.

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation is applicable to all special limited medical gas permit holders.

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 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? It costs roughly \$35,000 to administer this program.

(d) How much will it cost to administer this program for subsequent years? Unless we acquire more permit holders, the costs will remain the same.

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

Revenues (+/-): +35,400

Expenditures (+/-): -35,400

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? \$150 annually.

(d) How much will it cost the regulated entities for subsequent years? \$150 annually.

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 (+/-): -150

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 regulation does not have major economic impact.

BOARDS AND COMMISSIONS

**Board of Pharmacy
(Amendment)**

201 KAR 2:240. Special limited pharmacy permit – Charitable.

RELATES TO: KRS 315.035

STATUTORY AUTHORITY: KRS 315.020, 315.030, 315.035, 315.191(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations to prescribe the criteria for obtaining a pharmacy permit to dispense legend drugs and the procedures for the safe dispensing of legend drugs to citizens of the Commonwealth. This administrative regulation identifies the manner and procedure by which a charitable organization may obtain a pharmacy permit and dispense legend drugs in the Commonwealth.

Section 1. Definitions. (1) "Charitable organization" means an organization qualified as a charitable organization pursuant to Section 501(c)(3) of the Internal Revenue Code.

(2) "Legend drug sample" means an unopened package of a manufacturer's legend drug product that has been distributed to either a practitioner or the charitable pharmacy in accordance with the provisions of the Prescription Drug Marketing Act of 1987.

(3) "Qualified indigent patient" means a patient of the charitable pharmacy that has been screened and approved by the charitable organization as meeting the organization's mission of providing pharmaceutical care to those who are without sufficient funds to obtain needed legend drugs.

(4) "Special limited pharmacy permit" means a permit issued to a pharmacy that provides specialized pharmacy services, such as dispensing legend drugs, and counseling patients.

Section 2.

(1) A charitable pharmacy:

(a) Shall comply with all pharmacy permit requirements except those specifically exempted by the board pursuant to paragraph (b) of this subsection; and

(b) May petition the board in writing to be exempted from those pharmacy permit requirements that do not pertain to the operation of that charitable pharmacy.

(2) The charitable pharmacy only shall dispense prescription legend drug samples or prescription legend drugs to qualified indigent patients of the pharmacy.

(3) The charitable pharmacy shall not charge any fee for the dispensing of prescription legend drug samples or prescription legend drugs to qualified indigent patients of the pharmacy.

(4) A charitable pharmacy may accept prescription legend drugs in their unbroken original packaging from pharmacies, wholesalers, or manufacturers, provided appropriate records of receipt and dispensing are maintained.

(5) A charitable pharmacy shall not:

(a) Accept controlled substances from pharmacies, wholesalers, or manufacturers; or

(b) Dispense controlled substances.

(6) A pharmacy that requests a special limited pharmacy permit - charitable shall submit to the board for prior approval, a plan describing the method by which the charitable pharmacy and the pharmacy shall maintain a separate and distinct prescription drug stock. The failure of either pharmacy to follow the plan shall result in revocation of the special limited pharmacy permit - charitable and the pharmacy permit.

Section 3. License Fees; Renewals. An applicant shall submit:

(1) An initial or renewal application for a special limited pharmacy permit - charitable pharmacy on either the Application for Special Limited Pharmacy Permit – Charitable Pharmacy or the Application for Special Limited Pharmacy Permit – Charitable Pharmacy Renewal; and

(2) As appropriate, the:

(a) Initial application fee established by 201 KAR 2:050,

Section 1(8); or

(b) Renewal fee established by 201 KAR 2:050, Section 1(9) and (10).

Section 4. Incorporation By Reference.

(1) The following material is incorporated by reference:

(a) "Application for Special Limited Pharmacy Permit – Charitable Pharmacy", June 2023[May 2020];[and]

(b) "Application for Special Limited Pharmacy Permit – Charitable Pharmacy Renewal", June 2023[May 2020].

(c) "Application for Non-Resident Special Limited Pharmacy Permit – Charitable Pharmacy", June 2023; and

(d) "Application for Non-Resident Special Limited Pharmacy Permit—Charitable Pharmacy", June 2023.

(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/Businesses/Pages/Pharmacy.aspx>.

CHRISTOPHER HARLOW, Pharm.D., Executive Director

APPROVED BY AGENCY: June 7, 2023

FILED WITH LRC: June 7, 2023 at 1:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 30, 2023, at 10:00 a.m. Eastern Time via zoom teleconference. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023. 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 identifies the manner and procedure by which a charitable organization can be permitted to obtain a pharmacy permit and dispense legend drugs in the Commonwealth.

(b) The necessity of this administrative regulation: KRS 315.020, 315.030, and 315.191(1)(a) requires the board to promulgate administrative regulations to prescribe the criteria for obtaining a pharmacy permit to dispense legend drugs and the procedures for the safe dispensing of legend drugs to citizens of the Commonwealth. This administrative regulation identifies the manner and procedure by which a charitable organization can be permitted to obtain a pharmacy permit and dispense legend drugs in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation identifies the manner and procedure by which a charitable organization can be permitted to obtain a pharmacy permit and dispense legend drugs in the Commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation identifies the manner and procedure by which a charitable organization can be permitted to obtain a pharmacy permit and dispense legend drugs in the Commonwealth.

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

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

(b) The necessity of the amendment to this administrative regulation: The criteria needed to be updated.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 315.020 and 315.030 authorize the board to regulate the practice of pharmacy. KRS 315.191 authorizes the board to promulgate administrative regulations pertaining to pharmacists and pharmacies.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will further promote, preserve, and protect public health through effective regulation of pharmacists and pharmacies.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates pharmacies and pharmacists will be affected minimally 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: Pharmacies and pharmacists will have to familiarize themselves with amended language. The board will help to educate pharmacists and pharmacies in these changes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no expected costs for the permitted entities to comply with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The ability to function as a permitted pharmacy.

(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 the regulation is applicable to all charitable pharmacies 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 administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.191(1)(a).

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

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

(b) How much revenue will this administrative regulation

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

(c) How much will it cost to administer this program for the first year? The costs to operate this program are built into the board's operating costs.

(d) How much will it cost to administer this program for subsequent years? The costs to operate this program are built into the board's operating costs.

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

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation:

(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? \$150 annually.

(d) How much will it cost the regulated entities for subsequent years? \$150 annually.

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 (+/-): \$150

Other Explanation: This is the cost of the permit to operate.

(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 regulation does not have major economic impact.

BOARDS AND COMMISSIONS

Board of Pharmacy (Amendment)

201 KAR 2:320. Requirements for manufacturers and virtual manufacturers.

RELATES TO: KRS 315.010, 315.020(2), 315.036, 315.191(1)(a), 315.400, 315.404

STATUTORY AUTHORITY: KRS 315.020(2), 315.036, 315.191(1), 315.400

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.020, 315.036 and 315.191(1)(a) authorize the board to promulgate administrative regulations to regulate the manufacturers and virtual manufacturers of drugs and drug-related devices. This administrative regulation establishes the requirements for the regulation of manufacturers and virtual manufacturers.

Section 1. Definitions.

(1) "Component" means any raw material, ingredient, or article intended for use in the manufacture of a drug and drug-related device.

(2) "Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.

(3) "Illegitimate Product" is defined by KRS 315.400(11).

(4) "Manufacturer or virtual manufacturer" is defined by KRS 315.010(13).

(5) "Product" means a prescription drug in a finished dosage form for administration to a patient without substantial further

manufacturing, such as capsules, tablets, and lyophilized products before reconstitution.

(6) "Relabeler" means:

(a) Any person who owns or operates an establishment that changes the content of the labeling from that supplied from the original manufacturer for distribution under the establishment's own name; and

(b) Does not include establishments that do not change the original labeling, but merely add their own name.

(7) "Repackager" is defined by KRS 315.400(16).

(8) "Suspect product" means a component, prescription drug, or drug-related device for which there is reason to believe that such component, prescription drug, or drug-related device:

(a) Is potentially counterfeit, diverted, or stolen;

(b) Is potentially intentionally adulterated such that the component, prescription drug, or drug-related device would result in serious adverse health consequences or death to humans or animals;

(c) Is potentially the subject of a fraudulent transaction; or

(d) Appears otherwise unfit for distribution such that the component, prescription drug, or drug-related device would result in serious adverse health consequences or death to humans or animals.

Section 2. Requirements.

(1) A manufacturer or virtual manufacturer engaging in manufacturing in the Commonwealth shall apply for a permit from the Board of Pharmacy in accordance with KRS 315.036 and this administrative regulation.

(2) A separate permit shall be required for each facility within the Commonwealth regardless of whether joint ownership or control exists.

(3) An agent or employee of a permit holder shall not be required to obtain a permit under this section when the agent or employee is acting in the usual course of business or employment.

(4) A permit shall not be issued or renewed unless the applicant demonstrates or continues to demonstrate acceptable operational procedures, including:

(a) Adequate operation, maintenance, and storage conditions to ensure proper lighting, ventilation, temperature and humidity control, sanitation, space, and security as per label requirements or official United States Pharmacopoeia (USP) compendium requirements, USP Chapter 659, Packaging and Storage Requirements as incorporated by reference in 201 KAR 2:105. Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices, or logs shall be utilized to document proper storage of components and drugs and drug-related devices;

(b) Separation and quarantine of deteriorated, damaged, outdated, misbranded, adulterated, or otherwise recalled components and drugs and drug-related devices until they are destroyed or returned;

(c) Providing accurate and precise records of all components and drugs and drug-related devices shipped or received including source and recipient, date, quantity, itemized description, and any other information pertinent to the receipt and distribution or disposition; and

(d) Providing proof of registration with the U.S. Food and Drug Administration (FDA), the U.S. Drug Enforcement Administration (DEA), and compliance with all federal, state, and local laws and regulations.

(5) Manufacturers and virtual manufacturers shall comply with all requirements as outlined in the Drug Supply Chain Security Act (DSCSA), 21 U.S.C. 360eee-360eee-4., if applicable.

(6) Manufacturers and virtual manufacturers shall establish a system to:

(a) Quarantine and investigate suspect product to determine if it is illegitimate; and

(b) Notify FDA, the Board of Pharmacy, and recipient(s) of illegitimate product, if illegitimate product is found.

(7) All virtual manufacturers shall be exempt from the requirements of subsection 2(4)(a) and (b) of this Section, and Section 5(1)(a) and (b) and (2)(a) and (b) of this administrative

regulation.

Section 3. Qualifications for Permit.

(1) The Board of Pharmacy shall consider, at a minimum, the following factors in reviewing the qualifications of persons who engage in manufacture or virtual manufacture of drugs and drug-related devices within the Commonwealth:

(a) Any convictions of the officers of the applicant under any federal, state, or local laws relating to drugs, including drug samples and controlled substances;

(b) Any felony convictions of the applicant or its officers under federal, state, or local laws;

(c) The applicant's and its officers' past experience in the manufacture or virtual manufacture of drugs and drug-related devices, including drug samples and controlled substances;

(d) The furnishing by the applicant of false or fraudulent material in any application made in connection with drug manufacturing or virtual drug manufacturing;

(e) Suspension or revocation by federal, state, or local government of any license or permit currently or previously held by the applicant or its officers for the manufacture or virtual manufacture of any drugs and drug-related devices, including drug samples and controlled substances;

(f) Compliance with the requirements under any previously granted license or permit, if any; and

(g) Compliance with requirements to maintain or make available to the Board of Pharmacy or to federal, state, or local law enforcement officials those records required under this administrative regulation.

(2) The Board of Pharmacy shall have the right to deny a permit to an applicant if it determines that the granting of that permit would not be in the public interest based on health and safety considerations.

(3) A permit shall not be issued pursuant to this administrative regulation unless the applicant has furnished proof satisfactory to the Board of Pharmacy:

(a) That the applicant is in compliance with all applicable federal, state, and local laws and regulations relating to drugs and drug-related devices; and

(b) That the applicant is equipped as to land, buildings, and security to properly carry on the business described in the application.

(4) A permit issued pursuant to this administrative regulation may be disciplined, suspended, or revoked for failure to comply with the provisions of KRS 315.020, 315.036, 315.400, or this administrative regulation.

(5) No permit shall fail to designate a pharmacist-in-charge.

Section 4. Application, Fees, Renewals.

(1) An application for a permit shall be submitted to the Board of Pharmacy on the Application for a Permit to Operate as a Manufacturer or Virtual Manufacturer.

(2) An application shall be accompanied by the annual fee set forth in 201 KAR 2:050.

(3) An application shall include:

(a) The name, full business address, and telephone number of the applicant;

(b) All trade or business names used by the applicant;

(c) Addresses, telephone numbers, and the names of the persons for the facility used by the permit holder for the storage, handling, and manufacturing or virtual manufacturing of drugs and drug-related devices;

(d) The type of ownership or operation (i.e. partnership, corporation, or sole proprietorship);

(e) The name(s) of the owner and operator of the permit holder, including:

1. If a person, the name and Social Security number of the person;

2. If a partnership, the name and Social Security number of each partner, and the name of the partnership;

3. If a corporation, the name, Social Security number and title of each corporate officer and director, the corporate names, and the name of the state of incorporation; and

4. If a sole proprietorship, the full name and social security number of the sole proprietor and the name of the business entity; and

(f) A list of all licenses and permits issued to the applicant by any other state that authorizes the applicant to manufacture, virtual manufacture or possess drugs and drug-related devices.

(4) All permits shall:

(a) Expire on September 30 following the date of issuance; and

(b) Be:

1. Renewable annually thereafter upon completion of the Renewal Application to Operate as a Manufacturer or Virtual Manufacturer that is accompanied by the renewal fee set forth in 201 KAR 2:050; and

2. Nontransferable.

Section 5. Standards.

(1) Facilities.

(a) All facilities in which components and drugs and drug-related devices are labeled, relabeled, packaged, repackaged, stored, held, sold, offered for sale, exposed for sale, or kept for sale shall be of suitable size, construction, and location to facilitate cleaning, maintenance, and proper operations.

(b) All facilities shall meet all applicable federal, state, and local standards. The facility shall quarantine components and drugs and drug-related devices that are outdated, damaged, deteriorated, misbranded, recalled, or adulterated,

(c) A facility shall not be located in a residence.

(2) Security.

(a) A manufacturer shall be equipped with an alarm system to detect entry after hours.

(b) A manufacturer shall ensure that access from outside their premises is well-controlled and reduced to a minimum. This includes the installation of adequate lighting at the outside perimeter of the premises.

(c) Internal security policies shall be developed to provide reasonable protection against theft and diversion by limiting access to areas where components and drugs and drug-related devices are held to authorized personnel. These policies shall provide protection against tampering with computers or electronic records.

(d) A permit holder shall employ adequate personnel with the education and experience necessary to safely and lawfully engage in the manufacture or virtual manufacture of drugs and drug-related devices.

(e) Lists of officers, directors, managers and other persons in charge of manufacture or virtual manufacture, distribution or disposition, storage, and handling of components and drugs and drug-related devices, including a description of their duties and summary of their qualifications, shall be maintained for purpose of review.

(3) Recordkeeping requirements for companies handling prescription drugs and drug-related devices exempt from the DSCSA.

(a) Inventories and other records regarding the receipt and distribution or disposition of components and drugs and drug-related devices shall be maintained and readily available for inspection or photocopying by the Board of Pharmacy and authorized law enforcement officials for a period six (6) years. These records shall include:

1. The business name and address of the source of the components and drugs and drug-related devices including the seller or transferor and the address of the location from which the components and drugs and drug-related devices were shipped;

2. The business name and address to whom components and drugs and drug-related devices were shipped including the purchaser and the address of the location where the components and drugs and drug-related devices were shipped;

3. The identity and quantity of the components and drugs and drug-related devices received and distributed or disposed of; and

4. The dates of receipt and distribution or disposition of the components and drugs and drug-related devices.

(b) The manufacturer or virtual manufacturer shall keep production and process control records for a period of six (6) years following completion of manufacturing.

(c) Records described in this section that are kept at the inspection site or that can be readily retrievable within forty-eight (48) hours by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two (2) working days of a request by the Board of Pharmacy or an authorized official of a federal, state, or local law enforcement agency.

(d) Manufacturers and virtual manufacturers shall maintain an ongoing list of verified persons and businesses with whom they do business.

(e) A permitted manufacturer and virtual manufacturer may sell or distribute drugs and drug-related devices only to the following:

1. A currently permitted manufacturer or virtual manufacturer;

2. A currently licensed third-party logistics provider;

3. A currently licensed wholesaler;

4. A currently permitted pharmacy;

5. A currently licensed outsourcing facility;

6. A currently licensed practitioner;

7. A currently permitted repackager or relabeler;

8. A currently licensed hospital, but only for use by or in that hospital pursuant to KRS 217.182(1);

9. A person in charge of a laboratory, but only for use in that laboratory for scientific and medical research purposes pursuant to KRS 217.182(1); or

10. Any other appropriately licensed or permitted facility in the jurisdiction in which it is located.

(f) Manufacturers and virtual manufacturers shall maintain a system for the mandatory reporting of any theft, suspected theft, diversion, or other significant loss of any component or drug or drug-related device to the Board of Pharmacy and if applicable the FDA and DEA.

(4) Written policies and procedures, requirements for companies handling prescription drugs and drug-related devices exempt from the DSCSA.

(a) A manufacturer or virtual manufacturer shall establish, maintain, and adhere to written policies and procedures for all operations including production, process controls, receipt, security, storage, inventory, and distribution or disposition of components and drugs and drug-related devices.

(b) There shall be written policies and procedures for identifying, recording, and reporting losses or thefts.

(c) There shall be written policies and procedures to assure that the manufacturer and virtual manufacturer prepares for, protects against, and handles crisis situations that affect the security, operation, and records of the permit holder. These crises shall include fires, floods, or other natural disasters, and situations of local, state, or national emergency.

(d) There shall be written policies and procedures for managing and correcting all errors or inaccuracies in inventories.

(e) There shall be written policies and procedures to assure that any outdated components or drugs or drug-related devices or any components or drugs or drug-related devices with an expiration date that, in the manufacturer's or virtual manufacturer's view, does not allow sufficient time for repacking or resale shall be segregated and shall be prepared for return or otherwise destroyed, and this shall be documented.

(f) There shall be written policies and procedures by which the manufacturer or virtual manufacturer exercises control over the shipping and receiving of all components and drugs and drug-related devices within the operation.

(g) There shall be written policies and procedures for investigating suspect product and reporting illegitimate product to the Board of Pharmacy, FDA, and recipient(s) of illegitimate product.

(5) Returned, damaged, and outdated drugs and drug-related devices. A manufacturer or virtual manufacturer shall maintain and follow a written procedure to assure the proper handling and disposal of returned components or drugs or drug-related devices. If conditions under which a drug or drug-related device has been returned cast doubt on the drug or drug-related device's safety, identity, strength, quality, or purity, then the drug or drug-related

device shall be destroyed, or returned to the supplier, unless examination, testing, or other investigation proves that the drug or drug-related device meets appropriate standards of safety, identity, strength, quality, and purity. In determining whether the conditions under which a drug or drug-related device has been returned cast doubt on the drug or drug-related device's safety, identity, strength, quality, or purity, the manufacturer or virtual manufacturer shall consider, among other things, the conditions under which the drug or drug-related device has been held, stored, or shipped before or during its return and the condition of the drug or drug-related device and its container, carton, or labeling, as a result of storage or shipping.

(6) Handling recalls. A manufacturer or virtual manufacturer shall adopt, maintain, and follow a written policy and procedure for handling recalls and withdrawals of components or drugs or drug-related devices. The policy shall cover all recalls and withdrawals due to:

(a) Any voluntary action on the part of the manufacturer or virtual manufacturer;

(b) The direction of the FDA, or any other federal, state, or local government agency; and

(c) Replacement, relabeling, or repackaging of existing component or drug or drug-related devices.

(7) Procedures.

(a) A visual examination of all materials received or shipped shall be made to guarantee product identity and to reasonably guard against acceptance or delivery of damaged, contaminated, tampered, or otherwise unfit stock.

(b) A manufacturer or virtual manufacturer shall be subject to the provisions of any applicable federal, state, or local laws or regulations that relate to drug product and drug-related devices salvaging or reprocessing.

Section 6. Pharmacist-in-charge. A manufacturer or virtual manufacturer shall designate a pharmacist-in-charge of the facility. The pharmacist-in-charge shall review security and records by conducting and documenting an on-site inspection not less than quarterly.

Section 7. Violations.

(1) A drug manufacturer or virtual manufacturer shall not distribute prescription drugs and drug-related devices directly to a consumer or a patient.

(2) A manufacturer or virtual manufacturer shall not operate in a manner that endangers the public health.

(3) Violation of any of these provisions shall be grounds for the discipline, suspension, or revocation of the permit.

Section 8. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for a Permit to Operate as a Manufacturer or Virtual Manufacturer", June 2023[May 2020]; and

(b) "Renewal Application to Operate as a Manufacturer or Virtual Manufacturer", June 2023[May 2020].

(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 40601-8024, Monday through Friday, 8 a.m. through 4:30 p.m. This material is also available on the board's Web site at <https://pharmacy.ky.gov/Businesses/Pages/Manufacturers.aspx>.

CHRISTOPHER HARLOW, Pharm.D., Executive Director

APPROVED BY AGENCY: June 7, 2023

FILED WITH LRC: June 7, 2023 at 1:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 30, 2023, at 10:00 a.m. Eastern Time via zoom. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an

opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023. 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 requirements for Manufacturers and virtual manufacturers.

(b) The necessity of this administrative regulation: KRS 315.191(1)(a) authorizes the Board of Pharmacy to promulgate administrative regulations with minimum requirements for the permitting of those entities manufacture prescription drugs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements for Manufacturers and virtual manufacturers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation ensures compliance with federal 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: This amendment only amends the forms for manufacturers including the permit application and renewal application.

(b) The necessity of the amendment to this administrative regulation: The fee has been proposed to be amended in 201 KAR 2:050. This amendment is necessary to amend the form with the new fee amount.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations pertaining to pharmacists and pharmacies.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will further promote, preserve, and protect public health through effective regulation of pharmacists and pharmacies.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates pharmacies and pharmacists will be affected minimally 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: Only in-state drug manufacturers and virtual manufacturers will be impacted by this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no expected costs for the entities that are permitted except for the permit and renewal fees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Processing of applications in a timely manner.

(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: This amendment is only a proposed to forms. 201 KAR 2:050 does contain a proposed change to fees for applications and renewals by an increase of twenty-five (\$25) dollars.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The administrative regulation does not directly establish fees; however 201 KAR 2:050 is being amended with a proposed twenty-five (25) dollar fee increase for applications and renewal applications.

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation is applicable to all entities wishing to manufacture drugs 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 Kentucky Board of Pharmacy will be the only entity impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.191(1)(a).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate anything on its own. It does not contain a fee.

(b) How 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 contain a fee.

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

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

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

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: 201 KAR 2:050 does increase fees by \$25 for a manufacturing permit.

(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? \$150 annually.

(d) How much will it cost the regulated entities for subsequent years? \$150 annually.

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 (+/-): \$150

Other Explanation: This is the cost of the manufacturing permit.

(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 regulation does not have major economic impact.

BOARDS AND COMMISSIONS

Board of Pharmacy (Amendment)

201 KAR 2:340. Special limited pharmacy permit - clinical practice.

RELATES TO: KRS 315.010(9), 315.020, 315.035, 315.191(1)(a)

STATUTORY AUTHORITY: KRS 315.035, 315.191(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.035 authorizes the Board of Pharmacy issue a permit to a pharmacy. KRS 315.191(1)(a) authorizes the Board of Pharmacy to promulgate administrative regulations with minimum requirements for the permitting of those entities that provide non-dispensing pharmacy services. This administrative regulation establishes the requirements for the Special limited pharmacy permit - Clinical practice.

Section 1. Definitions.

(1) "Special limited pharmacy permit" means a permit issued to a pharmacy that provides miscellaneous specialized pharmacy service and functions.

(2) "Special limited pharmacy permit - clinical practice" means a permit issued to a pharmacy that maintains patient records and other information for the purpose of engaging in the practice of pharmacy and does not dispense prescription drug orders.

Section 2. General Requirements.

(1) An applicant for a special limited pharmacy permit - clinical practice shall:

(a) Prepare and adopt a policy and procedure manual that is updated annually;

(b) Maintain pharmacy references as outlined in 201 KAR 2:090;

(c) Maintain a physical pharmacy address;

(d) Designate a Pharmacist-in-Charge (PIC) without a required minimum number of hours of physical presence;

(e) Maintain patient records for five (5) years in a manner that shall provide adequate safeguard against improper manipulation or alteration of the records; a computer malfunction or data processing services' negligence is not a defense against the charges of improper recordkeeping; and

(f) Maintain patient records by establishing:

1. A patient record system to be maintained for patients for whom non-dispensing pharmacy services and functions are being performed;

2. A procedure for obtaining, recording, and maintaining information required for a patient record by a pharmacist, pharmacist intern, or pharmacy technician; and

3. A procedure for a patient record to be readily retrievable by manual or electronic means.

(2) An applicant for a special limited pharmacy permit - clinical practice shall be exempt from the following:

(a) Prescription equipment requirements of 201 KAR 2:090, Section 1;

(b) Pharmacy sanitation requirements of 201 KAR 2:180; and

(c) Security and control of drugs and prescriptions requirements of 201 KAR 2:100, Sections 1, 2, 3, and 4.

Section 3. Pharmacy Closure. The permit holder shall provide notification to the board fifteen (15) days prior to permanent

pharmacy closure.

Section 4. License Fees; Renewals. An applicant shall submit:

(1) An initial or renewal application for a special limited pharmacy permit - clinical practice on either the Application for Special Limited Pharmacy Permit - Clinical Practice or the Application for Special Limited Pharmacy Permit - Clinical Practice Renewal; and

(2) As appropriate, the:

(a) Initial application fee established by 201 KAR 2:050, Section 1(9); or

(b) Renewal application fee established by 201 KAR 2:050, Section 1(10).

Section 5. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Special Limited Pharmacy Permit - Clinical Practice", June 2023[May 2019];[and]

(b) "Application for Special Limited Pharmacy Permit - Clinical Practice Renewal", June 2023;[May 2019-]

(c) "Nonresident Application for Special Limited Pharmacy Permit – Clinical Practice", June 2023; and

(d) "Nonresident Application for Special Limited Pharmacy Permit – Clinical Practice Renewal", June 2023.

(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, 8:00 a.m. to 4:30 p.m. This material is also available on the board's Web site at <https://pharmacy.ky.gov/Businesses/Pages/Pharmacy.aspx>.

CHRISTOPHER HARLOW, Pharm.D., Executive Director

APPROVED BY AGENCY: June 7, 2023

FILED WITH LRC: June 7, 2023 at 1:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 30, 2023, at 10:00 a.m. Eastern Time via zoom teleconference. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023. 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 regulation creates rules for pharmacies that do not possess prescription drugs and that only offer clinical services.

(b) The necessity of this administrative regulation: KRS 315.191(1)(a) authorizes the Board of Pharmacy to promulgate administrative regulations to control the transfer of prescription drug orders between pharmacists and pharmacies. This administrative regulation establishes consistent with the requirements of KRS 315.191(1)(a) minimum requirements for the permitting of those entities that only perform clinical functions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes consistent with the requirements of KRS 315.191(1)(a) minimum requirements for the permitting of those entities that only perform

clinical functions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation allows for a separate regulatory regime for entities that don't possess prescription drugs and that only offer clinical 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 only amendment is to the forms.

(b) The necessity of the amendment to this administrative regulation: The criteria needed to be updated.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 315.002 and 315.005 authorize the board to regulate the practice of pharmacy. KRS 315.191 authorizes the board to promulgate administrative regulations pertaining to pharmacists and pharmacies. KRS 315.191(1)(a) directs the Board of Pharmacy to promulgate administrative regulations regarding reference material and equipment suitable for pharmaceutical practice.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will further promote, preserve, and protect public health through effective regulation of pharmacists and pharmacies. The form has been updated with the fee increase of twenty-five (25) dollars and this amendment reflects that in the forms.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates pharmacies and pharmacists will be affected minimally 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: Pharmacies and pharmacists will have to familiarize themselves with amended language. The board will help to educate pharmacists and pharmacies in these changes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no expected costs for the identities to comply with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation establishes consistent with the requirements of KRS 315.191(1)(a) minimum requirements for the permitting of those entities that perform clinical pharmacy functions only.

(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 amendment. The fee increase is contained in 201 KAR 2:050.

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

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation is applicable to all pharmacies that desire to offer only clinical services.

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 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. The cost of the permitting of this program is contained in 201 KAR 2:050.

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

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

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: The cost of managing the permit issuance is \$150 per permit. This fee increase is contained in 201 KAR 2:050.

(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? \$150 annually.

(d) How much will it cost the regulated entities for subsequent years? \$150 annually.

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 (+/-): \$150

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 regulation does not have major economic impact.

BOARDS AND COMMISSIONS

Board of Pharmacy
(Amendment)

201 KAR 2:390. Requirements for third-party logistics providers.

RELATES TO: KRS 315.0351, 315.121, 315.191(1)(a), 315.400, 315.4102, 315.4104, 315.4106, 315.4108, 315.4110[~~24 U.S.C. 360eee-360eee-4~~]

STATUTORY AUTHORITY: KRS 315.191(1)(a), 315.4102, 315.4104, 315.4106, 315.4108, 315.4110

NECESSITY, FUNCTION AND CONFORMITY: KRS 315.191(1)(a), 315.4102, 315.4104, 315.4106, 315.4108, and 315.4110 authorizes the board to promulgate administrative regulations to regulate third-party logistics providers. This administrative regulation establishes requirements for the regulation of third-party logistics providers

Section 1. Definitions.

(1) "Board" means the Board of Pharmacy.

(2) "Component" means any raw material, ingredient, or article intended for use in the manufacture of a drug and drug-related device.

(3) "Distribution" or "distribute" is defined by KRS 315.400(5).

(4) "Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.

(5) "Illegitimate product" is defined by KRS 315.400(11).

(6) "Product" means a prescription drug in a finished dosage form for administration to a patient without substantial further manufacturing, such as capsules, tablets, and lyophilized products before reconstitution.

(7) "Suspect product" means a component, prescription drug, or drug-related device for which there is a reason to believe that the component, prescription drug, or drug-related device:

(a) Is potentially counterfeit, diverted, or stolen;

(b) Is potentially intentionally adulterated so that the component, prescription drug, or drug-related device may result in serious adverse health consequences or death to humans or animals;

(c) Is potentially the subject of a fraudulent transaction; or

(d) Appears otherwise unfit for distribution so that the component, prescription drug, or drug-related device may result in serious adverse health consequences or death to humans or animals.

(8) "Third-party logistics provider" is defined by KRS 315.400(18).

Section 2. Requirements. (1) A third-party logistics provider providing services in the Commonwealth, including distributing into the Commonwealth, shall apply for a license from the Board in accordance with KRS 315.4102 and this administrative regulation.

(2) A separate license shall be required for each third-party logistics provider's facility that provides services in the Commonwealth, including distributing into the Commonwealth, regardless of whether joint ownership or control exists.

(3) An agent or employee of a licensee shall not be required to obtain a license under this section if the agent or employee is acting in the usual course of business or employment.

(4) A license shall not be issued or renewed unless the applicant demonstrates or continues to demonstrate acceptable operational procedures, including:

(a) Adequate operation, maintenance, and storage conditions to ensure proper lighting, ventilation, temperature and humidity control, sanitation, space, and security as per label requirements or official United States Pharmacopoeia (USP) compendium requirements, USP Chapter 659, Packaging and Storage Requirements, as incorporated by reference in 201 KAR 2:105. Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices, or logs shall be utilized to document proper storage of components, prescription drugs, or drug-related devices;

(b) Separation and quarantine of deteriorated, damaged, outdated, misbranded, adulterated, or recalled components, prescription drugs, or drug-related devices until they are destroyed or returned; and

(c) If applicable, provide proof of registration with the U.S. Food and Drug Administration (FDA) and U.S. Drug Enforcement Administration (DEA) and shall comply with all federal laws, state and local laws, and regulations.

(5) A third-party logistics provider shall comply with all requirements as outlined in the Drug Supply Chain Security Act (DSCSA), 21 U.S.C. 360eee-360eee-4, and other applicable federal laws.

(6) A third-party logistics provider shall establish a system to quarantine or destroy suspect or illegitimate product if directed to do so by the manufacturer, repackager, wholesale distributor, dispenser, or authorized government agency.

(7) A third-party logistics provider shall have readily retrievable within forty-eight (48) hours, upon written request of the board or its agents, and maintain for board inspection, a list of all manufacturers, wholesale distributors, repackagers, and dispensers for whom the third-party logistics provider provides services;

(8) A third-party logistics provider shall have readily retrievable within forty-eight (48) hours, upon written request of the board or its agents, and maintain for Board inspection, a list of each partner, limited liability company member, corporate officer or director, and facility manager, including a description of the duties and qualifications of each; and

(9) A third-party logistics provider shall have readily retrievable within forty-eight (48) hours, upon written request of the board or its agents, and maintain for board inspection, records with capability to trace the receipt and outbound distribution or disposition of components, prescription drugs, or drug-related devices and records of inventory.

Section 3. Qualifications for Licensure. (1) The Board shall consider, at a minimum, the following factors in determining the eligibility for initial licensure and renewal of third-party logistics providers:

(a) Minimum considerations in KRS 315.4106(1);

(b) Any convictions of the applicant or its officers under any federal, state, or local laws relating to drugs, including drug samples and controlled substances;

(c) The applicant's and its officers' past experience with distribution of prescription drugs and drug-related devices, including drug samples and controlled substances; and

(d) Compliance with the requirements under any previously granted license or permit, if any.

(2) The Board may deny a license to an applicant if it finds that the granting of that license would not be in the public interest based on health and safety considerations.

(3) A license shall not be issued pursuant to this administrative regulation unless the applicant has furnished proof satisfactory to the board:

(a) That the applicant is in compliance with all applicable federal, state, and local laws and regulations relating to prescription drugs and drug-related devices; and

(b) That the applicant is equipped as to land, buildings, and security to properly conduct the business described in the application.

(4) A license issued pursuant to this administrative regulation failing to comply with the provisions of KRS 315.400, 315.4102, 315.4104, 315.4106, 315.4108, 315.4110, or this administrative regulation may result in discipline, suspension, or revocation under KRS 315.121.

Section 4. Application, Fees, Renewals.

(1) An applicant for initial licensure or renewal as a third-party logistics provider shall submit:

(a) A non-refundable initial licensure or renewal fee of \$400~~[\$200]~~ by check or money order made payable to the Kentucky State Treasurer;

(b) A complete, sworn, and notarized Application to Operate as

a Third-Party Logistics Provider or Application for Third-Party Logistics Provider License Renewal;

(c) Unless previously provided, documentation of licensure as a third-party logistics provider through proof of registration with either:

1. The FDA; or

2. The state in which the third-party logistics provider is located;

(d) Unless previously provided, copy of most current inspection report conducted by the FDA. If the most current inspection report is not available from the FDA, the applicant shall submit an inspection report by:

1. The National Association of Boards of Pharmacy (NABP); or

2. The resident state licensing or permitting authority's authorized agent;

(e) A confirmation statement from the previous owner if ownership changed;

(f) Legal proof of any name change, if applicable;

(g) An explanation if an applicant, officer, partner, or director has ever been convicted of a felony or had a professional license or permit disciplined under federal, state, or local law;

(h) Ownership information for each partner, director, or officer, including:

1. Name and title;

2. Email addresses;

3. Federal employer identification number;

4. Address;

5. Phone number;

6. Social security number; and

7. Date of birth;

(i) State of incorporation or organization if the owner is a corporation; and

(j) Upon request, a list of all manufacturers, repackagers, wholesale distributors, and dispensers for whom the third-party logistics provider provides services.

(2) An applicant applying for any ownership or address change shall submit a non-refundable fee of \$150~~[\$400]~~.

(3) Each license shall expire on June 30 following date of issuance, unless earlier suspended or revoked. There shall be a delinquent renewal fee of \$150~~[\$200]~~ for failure to renew by June 30 of each year.

Section 5. Standards. (1) Facilities.

(a) All facilities in which components, prescription drugs, or drug-related devices are held shall be of suitable size, construction, and location to facilitate cleaning, maintenance, and proper operations;

(b) All facilities shall meet all applicable federal, state, and local laws and regulations;

(c) A third-party logistics provider shall quarantine components, prescription drugs, or drug-related devices that are outdated, damaged, deteriorated, misbranded, recalled, or adulterated;

(d) A facility shall not be located in a residence; and

(e) A facility shall be located apart and separate from any pharmacy permitted by the Board.

(2) Security.

(a) A third-party logistics provider shall be equipped with an alarm system to detect entry after hours.

(b) A third-party logistics provider shall assure that access from outside the provider's premises is well controlled and reduced to a minimum. This includes the installation of adequate lighting at the outside perimeter of the premises.

(c) Internal security policies shall be developed to provide reasonable protection against theft and diversion by limiting access to areas where components, prescription drugs, or drug-related devices are held to authorized personnel. These policies shall provide protection against tampering with computers or electronic records.

(d) A third-party logistics provider shall employ adequate personnel with the education and experience necessary to safely and lawfully engage in providing these services.

(3) Recordkeeping requirements for companies handling prescription drugs and drug-related devices exempt from the

DSCSA.

(a) Inventories and other records regarding the receipt and distribution or disposition of components, prescription drugs, or drug-related devices shall be maintained and readily retrievable within forty-eight (48) hours for inspection or photocopying by the Board and authorized officials of any federal, state or local law enforcement agencies for a period of six (6) years. These records shall include:

1. The business name and address of the third-party logistics provider's client and the address of the location from which the components~~[component]~~, prescription drugs, or drug-related devices were received;

2. The business name and address to whom the components, prescription drugs, or drug-related devices were distributed or disposed of;

3. The identity and quantity of the components, prescription drugs, or drug-related devices received and distributed or disposed of; and

4. The dates of receipt and distribution or disposition of the components, prescription drugs, or drug-related devices.

(b) Records described in this section that are kept at the inspection site or that may be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two (2) working days of a request by the Board or an authorized official of any federal, state or local law enforcement agency.

(c) Third-party logistics providers shall maintain an ongoing list of verified persons or businesses to whom they ship prescription drugs and drug-related devices.

(d) Third-party logistics providers may distribute components, prescription drugs, or drug-related devices only to the following, except as established in KRS 315.0351(2) and 315.404:

1. A currently permitted manufacturer;
2. A currently licensed wholesaler;
3. A currently licensed third party logistics provider;
4. A currently permitted pharmacy;
5. A currently licensed outsourcing facility;
6. A currently licensed practitioner;
7. A currently permitted repackager;
8. A currently licensed hospital, but only for use by or in that hospital;

9. A person in charge of a laboratory, but only for use in that laboratory for scientific and medical research purposes; or

10. Any other appropriately licensed or permitted facility in the jurisdiction in which it is located.

(4) Written policies and procedures.

(a) A third-party logistics provider shall establish, maintain, and adhere to written policies and procedures for the receipt, security, storage, inventory, and distribution or disposition of components, prescription drugs, or drug-related devices.

(b) There shall be written policies and procedures for identifying, recording, and reporting significant losses or thefts to the Board, and, if applicable, the FDA and the DEA.

(c) There shall be written policies and procedures for protecting against, and handling crisis situations that affect the security or operation of the facility. These crises shall include fires, floods, or other natural disasters, and situations of local, state, or national emergency.

(d) There shall be written policies and procedures for managing and correcting all errors or inaccuracies in inventories.

(e) There shall be written policies and procedures as to the handling of any outdated, returned, or damaged prescription drugs and drug-related devices. Any outdated, returned, or damaged components, prescription drugs, or drug-related devices shall be segregated.

(f) There shall be written policies and procedures by which the third-party logistics provider exercises control over the shipping and receiving of all components, prescription drugs, or drug-related devices within the operation.

(g) There shall be written policies and procedures for quarantining suspect product and illegitimate product if directed to

do so by the respective manufacturer, repackager, wholesale distributor, dispenser, or authorized government agency.

(5) Handling recalls. A third-party logistics provider shall establish, maintain, and adhere to a written policy and procedure in accordance with business agreements as to the handling of recalls and withdrawals of components, prescription drugs, or drug-related devices.

Section 6. Violations. (1) A third-party logistics provider shall not distribute components, prescription drugs, or drug-related devices directly to a consumer or a patient, except as established in KRS 315.0351(2).

(2) A third-party logistics provider shall not operate in a manner that endangers the public health.

(3) Violations of any of these provisions shall be grounds for action under KRS 315.121.

Section 7. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application to Operate as a Third-Party Logistics Provider", June 2023~~[May 2020]~~; and

(b) "Application For Third-Party Logistics Provider License Renewal", June 2023~~[May 2020]~~.

(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 40601-8024, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the Board's Web site at <https://pharmacy.ky.gov/Businesses/Pages/Third-Party-Logistics-Provider-License-Information.aspx>.

CHRISTOPHER HARLOW, Pharm.D., Executive Director

APPROVED BY AGENCY: June 7, 2023

FILED WITH LRC: June 7, 2023 at 1:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 30, 2023, at 10:00 a.m. Eastern Time. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023. 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 requirements for acquiring and maintaining a license to be third-party logistics provider.

(b) The necessity of this administrative regulation: This administrative regulation establishes the requirements as authorized by KRS 315.4102-315.4110.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes application requirements for initial application and renewal, qualifications for a license, and other general requirements as authorized by KRS 315.4102-4110.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Third-party

logistics providers are given greater direction on how to obtain a license and conduct business legally in the Commonwealth of 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 is limited to technical changes and a fee increase from \$200 to \$400.

(b) The necessity of the amendment to this administrative regulation: To ensure the Board is funded to provide proper regulatory oversight and guidance.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 315.4102-315.4110 address statutory requirements for third-party logistics providers. KRS 315.191 authorizes the Board of Pharmacy to promulgate regulations to implement and interpret KRS 315.4102-315.4110.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure that the Board of Pharmacy is properly funded to support the administrative functions necessary to protect the public.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board of pharmacy, wholesalers and third-party logistics providers are impacted by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The applicant will need to submit an application, pay a fee, and conduct business pursuant to the authorizing statutes and regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): \$400 annually.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Inspections and a license to operate as a third party logistics provider.

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

(a) Initially: It costs approximately \$400 per licensee to license, inspect, and enforce applicable laws and regulations that pertain to third-party logistics providers.

(b) On a continuing basis: The board will incur costs of approximately \$400 per licensee annually on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Enforcement of this regulation shall be accomplished through license fees. The Board of Pharmacy generates its own revenues without contribution from the General Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: A fee increase to \$400 is required to implement this regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation is applied to all applicants 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 the only entity impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.4102-4110 and KRS 315.191(1)(a) authorize the board to promulgate administrative regulations to regulate and control third-party logistics providers.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 Board will receive \$200 per license, and the license fee is utilized in licensing, inspecting and enforcing the board's regulations.

(b) How 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 amendment will bring in \$200 more per third-party logistics provider for the year.

(c) How much will it cost to administer this program for the first year? The costs to administer this licensing program are covered by the licensing fee of \$400.

(d) How much will it cost to administer this program for subsequent years? Roughly \$400 per applicant per year.

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

Revenues (+/-): +103,200

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. The cost will increase for regulated entities.

(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? \$400 per third-party logistics provider.

(d) How much will it cost the regulated entities for subsequent years? \$400 annually.

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 (+/-): \$400

Other Explanation: This is the cost of the license.

(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 regulation does not have major economic impact.

PUBLIC PROTECTION CABINET Kentucky Boxing and Wrestling Commission (Amendment)

201 KAR 27:005. Definitions for 201 KAR Chapter 27.

RELATES TO: KRS 229.011, 229.031, 229.111, 229.131, 229.155, 229.171(1)

STATUTORY AUTHORITY: KRS 229.171(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) authorizes the commission to exercise sole control, authority, and jurisdiction over all unarmed combat shows in the commonwealth. KRS 229.171(2) authorizes the commission to promulgate administrative regulations it considers necessary or expedient for the performance of its functions provided in KRS Chapter 229. This administrative regulation establishes the definitions used in 201 KAR Chapter 27.

Section 1. Definitions.

(1) "Battle royal" means an unarmed combat show involving more than two (2) contestants competing in a "last man standing wins" format.

(2) "Bout" means a single competition or exhibition of unarmed combat pitting two (2) opponents against one another in which the contestants strive earnestly and in good faith to win, are judged, and a winner declared.

(3) "Boxing" is defined by KRS 229.011(2).

(4) "Card" means a series of bouts, matches, or exhibitions scheduled or occurring as part of a single program.

(5) "Commission" is defined by KRS 229.011(3).

(6) "Contestant" means any person engaging in a show of unarmed combat coming under the commission's jurisdiction.

(7) "Exhibition" is defined by KRS 229.011(4).

(8) "Grounded Opponent" means a contestant participating in a match or bout who has any part of the body, other than the sole of the feet, touching the floor of the fenced area prescribed by 201 KAR 27:016 Section 5(4). To be found to be grounded by a referee in accordance with 201 KAR 27:016 Section 18, a flat palm of one hand must be down, or any other body part must be touching the fighting area floor, other than the sole of the feet. For example, a single knee or arm makes the fighter grounded without having to have any other body part in touch with the fighting area floor. The referee shall have the sole authority to determine whether a contestant is a grounded opponent in accordance with this definition.

(9) ~~(8)~~ "Healthcare professional" means any person licensed in Kentucky as a physician, chiropractor, podiatrist, nurse practitioner, physician assistant, registered nurse, physical therapist, paramedic, emergency medical technician, or athletic trainer.

(10) ~~(9)~~ "Inspector" means any person assigned by the executive director of the commission or the executive director's designee to supervise shows coming under the commission's jurisdiction.

(11) ~~(10)~~ "Judge" means an official licensed by the commission to score bouts and cast a vote in determining the winner of any bout.

(12) ~~(11)~~ "Kickboxing" is defined by KRS 229.011(5).

(13) ~~(12)~~ "Manager":

(a) Means a person who:

1. Undertakes to represent the interest of another person, in procuring, arranging, or conducting a professional bout or exhibition in which the person is to participate as a contestant;

2. Directs or controls the professional unarmed combat activities of a contestant;

3. Receives or is entitled to receive ten (10) percent or more of the gross purse or gross income of any professional contestant for services relating to participation of the contestant in a professional bout or exhibition; or

4. Receives compensation for service as an agent or representative of a bout; and

(b) Does not mean an attorney licensed to practice in this state if his or her participation in these activities is restricted solely to legal representation of the interests of a contestant as his or her client.

(14) ~~(13)~~ "Match" means a single event or exhibition in wrestling pitting two (2) or more opponents against one another.

(15) ~~(14)~~ "Medical advisory panel" means the Kentucky Boxing and Wrestling Medical Advisory Panel created by KRS 229.260.

(16) ~~(15)~~ "Mixed martial arts" is defined by KRS 229.011(6).

(17) ~~(16)~~ "Promoter" means any individual, corporation, association, partnership, or club that is licensed to promote or conduct professional boxing, wrestling, mixed martial arts, or kickboxing shows within the commonwealth and who is responsible for the arranging, organizing, matchmaking, and booking of a show.

(18) ~~(17)~~ "Ring official" means any person who performs an official function during a bout, match, or exhibition, including an announcer, judge, healthcare professional, referee, or timekeeper.

(19) ~~(18)~~ "Second" means any person aiding, assisting, or advising a contestant during a show.

(20) ~~(19)~~ "Serious physical injury" means physical injury that

creates a substantial risk of death or causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

(21) ~~(20)~~ "Show" is defined by KRS 229.011(9).

(22) ~~(21)~~ "Technical knockout" means the ending of a bout by the referee or physician on the grounds of one (1) contestant's inability to continue, the opponent being declared the winner.

(23) ~~(22)~~ "Trainer" means any person who participates in the guidance and instruction of any contestant so as to make that individual proficient or qualified to engage in unarmed combat, if the training occurs within this commonwealth.

(24) ~~(23)~~ "Unarmed combat" is defined by KRS 229.011(10).

(25) ~~(24)~~ "Wrestling event staff" means anyone other than a wrestler or referee permitted to be inside the six (6) foot barrier around the ring during a wrestling event.

This is to certify that the Kentucky Boxing and Wrestling Commission has reviewed and recommended this administrative regulation, as required by KRS 229.025 and KRS 229.171.

MATT BYRD, Executive Director

RAY A. PERRY, Secretary

APPROVED BY AGENCY: June 14, 2023

FILED WITH LRC: June 15, 2023 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, August 24, 2023, at 1:00 PM Eastern Time at the Mayo-Underwood Building, Room 133CE, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Doug Hardin, Staff Attorney, Kentucky Boxing and Wrestling Commission, 500 Mero Street 218 NC, Frankfort, Kentucky 40601, phone (502) 782-8204, fax (502) 573-6625, email doug.hardin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Doug Hardin, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides definitions for terms used throughout the Kentucky Boxing and Wrestling Commission's administrative regulations.

(b) The necessity of this administrative regulation: This regulation is necessary to clearly articulate the regulatory requirements established in Kentucky Boxing and Wrestling Commission's administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 229.025 authorizes and requires the Commission to promulgate administrative regulations for licensing participants, officials, and physicians for unarmed combat shows.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Boxing & Wrestling Commission is charged with the responsibility of licensing and regulating unarmed combat shows. This administrative regulation is necessary to clearly articulate the definitions for terms used in the administrative 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: This amendment corrects some typographical errors, clarifies language in some of the existing definitions, and adds a definition for "grounded opponent."

(b) The necessity of the amendment to this administrative regulation: "Grounded opponent" was not previously defined, and this is a term that should be clearly defined with objective criteria to ensure fairness and consistency in matches and bouts across the Commonwealth.

(c) How the amendment conforms to the content of the authorizing statutes: These amendments conform to the content of the authorizing statute because this regulation sets forth licensing requirements as permitted by KRS 229.025

(d) How the amendment will assist in the effective administration of the statutes: The amendments provide better terminology and objective standards for the terms defined.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of February 2023, the Boxing & Wrestling Commission licenses and regulates over 800 licensees that will be affected by this administrative regulation, as follows:

Over 679 licensed contestants (includes boxers, kickboxers, amateur mixed martial artists, professional mixed martial artists, and wrestlers);

Over 185 licensed non-contestants (includes judges, trainers, managers, referees, timekeepers, and seconds).

Over 6 licensed medical providers (includes physicians and healthcare professionals)

Over 40 licensed promoters

(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: Participants and officials will need to understand the definition of "grounded opponent" in order to adequately participate in or officiate matches and bouts.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): These amendments will impose no new costs on licensees or other participants.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These amendments will impose no new costs on licensees or other participants.

(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 Commission to implement this administrative regulation initially.

(b) On a continuing basis: There will be no additional cost to the Commission to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no additional funding necessary to implement this amendment to the administrative regulation.

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

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

(9) TIERING: Is tiering applied? No, tiering is not applied because the definitions set forth in this administrative regulation apply equally to all licensees and participants.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 229.025, 229.031, 229.055, 229.111, 229.131, 229.155, 229.171, 15 U.S.C. 6304, 6305(a), (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? This administrative regulation is not intended to generate revenue for any state or local government agency.

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

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

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

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation is not intended to generate cost savings for regulated entities in the first year, except that certain licensed charitable gaming facilities will have a reduced annual fee if they do not host regularly scheduled bingo sessions.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation is not intended to generate cost savings for regulated entities in the first year.

(c) How much will it cost the regulated entities for the first year? This administrative regulation is not intended to generate costs for regulated entities in the first year.

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

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

Cost Savings (+/-): None

Expenditures (+/-): None

Other Explanation: None

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. This administrative regulation is not intended or anticipated to have a major economic impact as defined by KRS 13A.010(13).

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 Boxing & Wrestling Commission is the agency responsible for implementing this regulation.

**PUBLIC PROTECTION CABINET
Kentucky Boxing and Wrestling Commission
(Amendment)**

201 KAR 27:008. License requirements and fees.

RELATES TO: KRS 229.025, 229.035, 229.065, 229.171, Chapter 311, 15 U.S.C. 6304, 6305

STATUTORY AUTHORITY: KRS 229.025, 229.035, 229.065, 229.171, 15 U.S.C. 6304, 6305

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) authorizes the commission to exercise sole control, authority, and jurisdiction over all unarmed combat shows to be conducted, held, or given within the commonwealth. KRS 229.171(2) authorizes the commission to promulgate administrative regulations it considers necessary or expedient for the performance of its functions provided in KRS Chapter 229. KRS 229.025(3) requires the commission to promulgate administrative regulations to establish license types, the eligibility requirements for each license type, the expiration date of each license type, the annual license fee, and method for submitting all applications for licensure. KRS 229.025(2) prohibits participation in an unarmed combat show in any capacity without holding a license issued by the commission. KRS 229.035 requires a promoter license and a bond approved as to form and sufficiency of sureties by the commission. KRS 229.065 requires a license by the commission for wrestling training. 15 U.S.C. 6304 requires protection of the health and safety of boxers, and includes requirements for a physical examination, a physician to be present at ringside, an ambulance or resuscitation equipment, and health insurance coverage. 15 U.S.C. 6305 requires the commission to issue an identification card to each professional boxer who registers with the commission. This administrative regulation establishes license requirements and fees for persons who conduct activities regulated by the commission.

Section 1. General Provisions.

(1) A person shall not participate in an unarmed combat show or exhibition unless the person is licensed by the commission.

(2) Each license shall be separate. A person shall not use a license in one (1) capacity or sport to serve in a different capacity or sport, except:

(a) A manager may act as a second; and

(b) A contestant may act as a second.

(3) (a) A promoter license shall be valid for one (1) year from the date of issuance.

(b) All other licenses shall be valid from January 1 through December 31.

(4) Information provided on or with a license application shall be complete and correct. Any false statement of a material matter shall be grounds for:

(a) Denial of a license; or

(b) If the license has been issued, suspension, probation, or revocation of the license.

(5) The commission may require an applicant to appear before the commission to answer questions or provide documents in conjunction with an application for a license if:

(a) The person has not been licensed by the commission within the previous five (5) years;

(b) The person has a history of violations in any jurisdiction;

(c) The applicant has not fully completed the required application; or

(d) The applicant's written submissions have not met the applicant's burden of proof to prove his or her qualifications for a license.

(6) A licensee shall be governed by KRS Chapter 229 and 201 KAR Chapter 27 and shall be subject to any event-related orders given by the commission or an inspector.

Section 2. Licenses, Applications, and Fees.

(1) The applicant shall complete the appropriate application as established in the table in subsection (2) of this section. The application shall be signed by the applicant under penalty of

perjury.

(2) The following applications and non-refundable annual fees shall be required before any person may be licensed:

(a) Boxing and kickboxing licenses:

Boxing and Kickboxing License Type	License Application Required	License Fee
Boxer	Boxing-MMA Contestant Application	\$40[\$25]
Kickboxer	Boxing-MMA Contestant Application	\$40[\$25]
Manager	Non-Contestant Application	\$40[\$25]
Trainer	Non-Contestant Application	\$40[\$25]
Second	Non-Contestant Application	\$40[\$25]
Referee	Referee[Non-Contestant] Application	\$40[\$25]
Judge	Non-Contestant Application	\$40[\$25]
Timekeeper	Non-Contestant Application	\$40[\$25]

(b) Mixed martial arts licenses:

Mixed Martial Arts License Type	License Application Required	License Fee
Professional mixed martial artist	Boxing-MMA Contestant Application	\$40[\$25]
Amateur mixed martial artist	Boxing-MMA Contestant Application	\$40[\$25]
Manager	Non-Contestant Application	\$40[\$25]
Trainer	Non-Contestant Application	\$40[\$25]
Second	Non-Contestant Application	\$40[\$25]
Referee	Referee[Non-Contestant] Application	\$40[\$25]
Judge	Non-Contestant Application	\$40[\$25]
Timekeeper	Non-Contestant Application	\$40[\$25]

(c) Wrestling licenses:

Wrestling License Type	License Application Required	License Fee
Wrestler	Wrestler[Contestant] Application	\$40[\$25]
Referee	Referee[Non-Contestant] Application	\$40[\$25]
Wrestling event staff	Non-Contestant Application	\$40[\$25]

(d) Promoter license:

Promoter License Type	License Application Required	License Fee
Promoter	Promoter Application	\$300

(e) Medical Provider licenses:

Medical Provider License Type	License Application Required	License Fee
Physician	Medical Provider Application	\$40[\$25]
Healthcare Professional	Medical Provider Application	\$40[\$25]

(f) For all application fees, applicants that do not submit license applications via the eServices option on the Commission's Web site shall pay an additional processing fee of ten (10) dollars.

Section 3. Health Physical and Application Timing Requirements.

(1) The following applicants for licensure shall submit the form Physical Report to demonstrate the results of a physical that was completed by a physician not more than ninety (90) days before the licensing application is submitted:

- (a) Boxer;
- (b) Kickboxer;
- (c) Professional mixed martial artist;
- (d) Amateur mixed martial artist;
- (e) Boxing and kickboxing referee; and
- (f) Mixed martial arts referee.

(2) An applicant for licensure as a wrestler or wrestling referee shall submit the form Physical Report to demonstrate the results of a physical that was completed by a physician not more than (90) days before the licensing application is submitted if the applicant:

- (a) Has not held a wrestler license in the past two (2) years;
- (b) Is forty-five (45) years of age or older; or
- (c) Has had an in-patient surgical procedure or overnight hospital stay in the past one (1) year.

(3) An applicant who is subject to subsection (1) or [subsection](2) of this section shall submit his or her physical and bloodwork to the commission no less than two (2) business days prior to the applicant's first event.

Section 4. Determination of Ability to Obtain a License as a Contestant.

(1) An applicant for a license as a boxer, kickboxer, or professional mixed martial artist shall demonstrate the ability to:

- (a) Be competitive in the sport; and
- (b) Compete without the risk of serious physical injury.

(2) An applicant for a license as a wrestler or an amateur mixed martial artist shall demonstrate that the applicant has the ability to compete without the risk of serious physical injury.

(3)(a) Individual consideration from a member of the medical advisory panel shall be required if an applicant for licensure as a boxer, kickboxer, professional mixed martial artist, or amateur mixed martial artist:

- 1. Is thirty-eight (38) or more years old;
- 2. Has accrued six (6) consecutive losses;
- 3. Has lost more than twenty-five (25) fights in his or her career;
- 4. Has fought in 350 or more career rounds;
- 5. Has lost more than five (5) bouts by knockout in his or her career; or
- 6. Has been inactive for more than thirty (30) months.

(b) A member of the medical advisory panel may order additional medical testing if the medical evidence before it is inconclusive or incomplete.

(c) The medical advisory panel or member of the panel shall report its recommendation to the commission within forty-five (45) days of being referred a physical.

Section 5. Medical Provider License.

(1) An applicant for a physician license shall be a physician licensed pursuant to KRS Chapter 311.

(2) A person licensed or seeking licensure as a physician or healthcare professional shall maintain an active license in his or her field of practice and certification to administer cardiopulmonary resuscitation.

Section 6. Promoter License. An applicant for licensure as a promoter shall obtain a \$10,000 Surety bond. To obtain a surety the applicant shall complete and have notarized the Promoter Bond Form.

Section 7. Change from Amateur Status to Professional Status.

(1) The commission shall consider the applicant's previous fighting experience in deciding whether to permit a person licensed as an amateur to become a professional. This consideration shall include the:

- (a) Number of sanctioned bouts the applicant has competed in;

(b) Number of sanctioned rounds the applicant has competed in;

(c) Date of the applicant's bouts;

(d) Applicant's performance in previous bouts, including the applicant's win-loss record; and

(e) Level of competition the applicant has competed against.

(2) A person shall not be licensed as a professional unless the person has fought in a minimum of three (3) bouts.

(3) A licensee who seeks to change his or her status from amateur to professional shall submit his or her license application to the commission no less than fifteen (15) calendar days prior to the applicant's first professional event.

Section 8. Boxer's Federal Identification Card.

(1) To obtain a boxer's federal identification card, an applicant shall complete and submit to the commission a Boxer's Federal Identification Card Application.

(2) The fee for a boxer's federal identification card shall be ten (10) dollars, which shall be submitted with the Boxer's Federal Identification Card Application.

(3) The boxer's federal identification card shall be valid for four (4) years from the date issued.

Section 9. Change of address. A licensee shall provide his or her new address to the commission within thirty (30) days of a change in address.

Section 10. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Boxing-MMA Contestant Application", June 2023[November, 2019];

(b) "Wrestler Contestant Application", June 2023;

(c)[(b)] "Non-Contestant Application", June 2023[November, 2019];

(d)[(e)] "Promoter Application", June 2023[November, 2019];

(e)[(d)] "Medical Provider Application", June 2023[November, 2019];

(f)[(e)] "Physical Report", June 2023[November, 2019];

(g)[(f)] "Promoter Bond Form", June 2023[November, 2019];[and]

(h)[(g)] "Boxer's Federal Identification Card Application", June 2023[November, 2019.]; and

(i) "Referee Application", June 2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Boxing and Wrestling Commission office at 500 Mero St, 218NC, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., and is available online at <http://kbwa.ky.gov/Pages/Appsforms.aspx>.

This is to certify that the Kentucky Boxing and Wrestling Commission has reviewed and recommended this administrative regulation, as required by KRS 229.025 and KRS 229.171.

MATT BYRD, Executive Director

RAY A. PERRY, Secretary

APPROVED BY AGENCY: June 14, 2023

FILED WITH LRC: June 15, 2023 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, August 24, 2023, at 1:00 PM Eastern Time at the Mayo-Underwood Building, Room 133CE, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed

administrative regulation to the contact person.

Contact person: Doug Hardin, Staff Attorney, Kentucky Boxing and Wrestling Commission, 500 Mero Street 218 NC, Frankfort, Kentucky 40601, phone (502) 782-8204, fax (502) 573-6625, email doug.hardin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

201 KAR 27:008

Contact Person: Doug Hardin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes general requirements for licensing and establishes application fees for various licensing applications.

(b) The necessity of this administrative regulation: This regulation is necessary so that the Boxing & Wrestling Commission may establish licensing standards and fee schedules for unarmed combat shows in Kentucky, which are authorized pursuant to KRS 229.025.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 229.025 authorizes and requires the Commission to promulgate administrative regulations for licensing participants, officials, and physicians for unarmed combat shows.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Boxing & Wrestling Commission is charged with the responsibility of licensing and regulating unarmed combat shows. This administrative regulation establishes the process and forms necessary for licensure of participants, officials, and physicians. The regulation further establishes standards for compensation, pre-fight procedures, ring size, equipment and attire, weight classes, fight length, judging and scoring, and insurance.

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

(a) How the amendment will change this existing administrative regulation: This amendment reflects changes made to license application forms and new forms. These amendments will also increase the application fee for all license applications except for promoter licenses from \$25 to \$40, plus a \$10 processing fee for applications that are not submitted electronically.

(b) The necessity of the amendment to this administrative regulation: The commission created separate application forms for wrestlers apart from the form used for boxers and mixed martial artists, which were formerly contained on the same application form. Similarly, the commissioner has created a separate license application form for referees apart from other non-contestant application forms. The increase in license application fees was necessary to ensure that the Commission continues to have an adequate source of revenue to continue to meet its operational expenses and to ensure that Kentucky's fees are comparable to fees charged for similar licenses in other jurisdictions.

(c) How the amendment conforms to the content of the authorizing statutes: These amendments conform to the content of the authorizing statute because this regulation sets forth licensing requirements as permitted by KRS 229.025

(d) How the amendment will assist in the effective administration of the statutes: The separate application forms are intended to be more user-friendly for applicants and aid the Commission in more efficiently reviewing and processing applications. The increase in license application fees was necessary to ensure that the Commission continues to have an adequate source of revenue to continue to meet its operational expenses

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of February 2023, the Boxing & Wrestling Commission licenses and regulates over 800 licensees that will be affected by this administrative regulation, as follows:

Over 679 licensed contestants (includes boxers, kickboxers, amateur mixed martial artists, professional mixed martial artists, and wrestlers);

Over 185 licensed non-contestants (includes judges, trainers, managers, referees, timekeepers, and seconds);

Over 6 licensed medical providers (includes physicians and

healthcare professionals); and

Over 40 licensed promoters

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

Individuals applying for licensure as a wrestler or referee will have new forms specific to the license for which they are applying. All applicants except promoters will see an increase in the application fee from \$25 to \$40 with a \$10 processing fee for applications that are not submitted electronically.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

For every license type except promoter, the application fee is \$40 with an additional \$10 processing fee for applications that are not submitted electronically. This is an increase from the \$25 fee that the Commission currently charges these applicants. The application fee for promoters is \$300.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants that successfully complete and submit these applications who meet qualification standards will receive licenses to participate in unarmed combat events.

(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 Commission to implement this administrative regulation initially.

(b) On a continuing basis: There will be no additional cost to the Commission to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no additional funding necessary to implement this amendment to the administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Although this amendment increases fees for license applications, the implementation of this administrative regulation requires no increase in fees or funding. The compensation required by this amendment is paid by licensed promoters.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: These amendments will increase the application fee for all license applications except for promoter licenses from \$25 to \$40, plus a \$10 processing fee for applications that are not submitted electronically.

(9) TIERING: Is tiering applied? For every license type except promoter, the application fee is \$40, plus a \$10 processing fee for applications that are not submitted electronically. The application fee for promoters is \$300.

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 Boxing & Wrestling Commission is the agency responsible for implementing this regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 229.025, 229.031, 229.055, 229.111, 229.131, 229.155, 229.171, 15 U.S.C. 6304, 6305(a), (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? This

administrative regulation imposes license application fees on applicants, which is used

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

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

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

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation amendment is not intended and not likely to result in cost savings for regulated entities. This regulation will increase application fees for regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation is not intended to generate cost savings for regulated entities in the first year.

(c) How much will it cost the regulated entities for the first year? The application fee for all licensees other than promoters will increase from \$25 to \$40, plus a \$10 processing fee for applications not submitted through the Commission's website.

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

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

Cost Savings (+/-): None

Expenditures (+/-): None

Other Explanation: None

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. This administrative regulation is not intended or anticipated to have a major economic impact as defined by KRS 13A.010(13).

PUBLIC PROTECTION CABINET
Kentucky Boxing and Wrestling Commission
(Amendment)

201 KAR 27:011. General requirements for boxing and kickboxing shows.

RELATES TO: KRS 229.025, 229.031, 229.055, 229.111, 229.131, 229.155, 229.171, 15 U.S.C. 6304, 6305(a), (b)

STATUTORY AUTHORITY: KRS 229.025, 229.171, 15 U.S.C. 6304, 6305

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) authorizes the Kentucky Boxing and Wrestling Commission to exercise sole direction, management, control, and jurisdiction over all unarmed combat shows in the Commonwealth. KRS 229.171(2) authorizes the commission to promulgate administrative regulations it considers necessary or expedient for the performance of its functions provided in KRS Chapter 229. KRS 229.025 requires every

licensee to be subject to administrative regulations promulgated by the commission. 15 U.S.C. 6304 requires protection of the health and safety of boxers, and includes requirements for a physical examination, a physician to be present at ringside, an ambulance or resuscitation equipment, and health insurance coverage. 15 U.S.C. 6305 requires the commission to issue an identification card to each professional boxer who registers with the commission. This administrative regulation establishes the requirements for boxing and kickboxing shows, and for participants in boxing and kickboxing shows.

Section 1. Show Date. (1) A promoter shall request a show date by completing and submitting to the commission the Boxing and Kickboxing Show Notice Form.

(2) The Boxing and Kickboxing Show Notice Form shall be submitted to the commission for approval no less than thirty (30) calendar days before the requested show date.

(3) A promoter shall not advertise a show until the date has been approved by the commission. Approval is effective upon the commission:

(a) Placing the event on the Calendar of Events available on the commission's Web site at https://kbwc.ky.gov/ppc_boxing/Ecal.aspx [\[http://ins.kbwa.ky.gov/ecal.aspx\]](http://ins.kbwa.ky.gov/ecal.aspx); or

(b) Providing written notice that the event is approved.

Section 2. Program and Changes.

(1) If a contestant is unable to participate in a show for which the contestant has a contract, the contestant shall immediately notify the promoter and the commission. A contestant with repeated and unexcused absences or cancellations ~~[a cancellation]~~ shall be issued a violation.

(2) The proposed card for a show shall be filed with the commission at least five (5) business days prior to the show date. Notice of a change in a program or substitution in a show shall be immediately filed with the commission.

(3) If the commission determines that a proposed bout may not be reasonably competitive, the bout may be denied. Bout approval does not exempt contestants ~~[contestant]~~ from individual physical approval as required by 201 KAR 27:008, Section 3. The commission's determination shall be based upon the contestants' previous fighting experience, including:

(a) The number of bouts the contestants have competed in;

(b) The number of rounds the contestants have competed in;

(c) The date of the contestants' bouts;

(d) The contestants' performance in previous bouts, including the contestants' win-loss record;

(e) The level of competition the contestants have faced; and

(f) The contestants' medical histories.

(4) The final approved card for a show shall comprise a minimum of five (5) complete bouts, no later than two (2) business days prior to the show date.

Section 3. Compensation.

(1) If a show or exhibition is cancelled with less than twenty-four (24) hours' notice to the commission, ring officials shall be paid one-half (1/2) the compensation agreed upon prior to the bout.

(2) Before the commencement of a show or exhibition, the promoter shall tender to the inspector payment to each ring official. The schedule of compensation for a ring official shall be at least as established in this section. If a ring official serves both as a referee and as a judge under Section 13(2)(a) of this regulation, the official shall receive pay for both referee and judge services as established in this section. If a referee also serves as a judge other than as an in-ring judge, the referee shall only receive compensation as a referee as established in this section. ~~[as follows:]~~

(a) Judge: at least the amount set by the following schedule based on the number of bouts on the show card: ~~[seventy-five (75) dollars each:]~~

1. One (1) to eleven (11), \$125;

2. Twelve (12) or more bouts, \$175.

(b) Timekeeper: at least the amount set by the following

schedule based on the number of bouts on the show card: [seventy-five (75) dollars;]

1. One (1) to eleven (11) bouts, \$100;

2. Twelve (12) or more bouts, \$125.

(c) Physician: at least the amount set by the following schedule based on the number of bouts on the show card: [\$350;]

1. One (1) to eleven (11) bouts, \$400; and

2. Twelve (12) or more bouts, \$500.

(d) Each referee: At least the amount set by the following schedule based on the number of bouts on the show card: [Referee: \$100 each; and]

1. One (1) to eleven (11) bouts, \$150;

2. Twelve (12) or more bouts, \$200.

(e) Each [Bout] assistant: at least the amount set by the following schedule based on the number of bouts on the show card: [seventy-five (75) dollars each.]

1. One (1) to eleven (11) bouts, seventy-five (75) dollars; and

2. Twelve (12) or more bouts, \$100.

(3) Each contestant's compensation agreement shall be in writing and submitted to the commission for approval not less than two (2) calendar days prior to the date of the proposed show.

Section 4. Pre-Fight.

(1) A contestant shall weigh in stripped at a time set by the commission, which shall not be more than thirty-six (36) hours before the first scheduled bout of the show.

(a) A contestant shall produce one (1) form of picture identification at the weigh-in.

(b) The inspector and the promoter or a representative of the promoter conducting the show shall be in attendance to record the official weights.

(2) A contestant shall check in with the commission at least one (1) hour prior to the event start time. A contestant shall produce one (1) form of picture identification at check-in.

(3) A contestant shall attend a pre-fight meeting as directed by the commission.

(4)

(a) A contestant shall remain in the locker room area until it is time to compete unless approved by the inspector.

(b) The promoter shall supply a separate locker room for males and females.

(5) A contestant shall submit an original or certified copy of his or her HIV Antibody, Hepatitis B Antigen, and Hepatitis C Antibody test results to the commission at least forty-eight (48) hours prior to the event.

(a) The results of these tests shall be no more than 365 days old.

(b) A person with a positive test result shall not compete.

(6) A contestant shall undergo a pre-fight physical conducted by a physician within eight (8) hours of the show. Prior to undergoing the physical, a contestant shall submit a completed Boxing and Kickboxing Pre-Fight Medical Questionnaire under penalty of perjury.

(7) A contestant shall report to and be under the general supervision of the inspector in attendance at the show and shall comply with instructions given by the inspector.

Section 5. The Ring.

(1) The area between the ring and the first row of spectators on all four (4) sides and the locker room area shall be under the exclusive control of the commission. Commission staff and licensees shall be the only people allowed inside the areas under the control of the commission without inspector approval.

(2) An event held outdoors if the heat index is at or exceeds 100 degrees Fahrenheit shall be conducted under a roof or cover that casts shade over the entire ring.

(3)

(a) A ring shall have a canvas mat or similar material, unless the event is held outdoors in which case only canvas shall be used.

(b) A bout may be held in a mixed martial arts cage if the bout is in conjunction with a mixed martial arts event.

(4) There shall be an area of at least six (6) feet between the edge of the ring floor and the first row of spectator seats on all four

(4) sides of the ring. A partition, barricade, or some type of divider shall be placed:

(a) Between the first row of the spectator seats and the six (6) foot area surrounding the ring; and

(b) Along the sides of the entry lane for contestants to enter the ring.

(5) Ring specifications shall be as established in this subsection.

(a) A bout shall be held in a four (4) sided roped ring.

1. The floor of the ring inside the ropes shall not be less than sixteen (16) feet square.

2. The floor of the ring shall extend beyond the ropes for a distance of not less than one (1) foot.

3. The floor of the ring shall be elevated not more than six (6) feet above the arena floor.

4. The ring shall have steps to enter the ring on two (2) sides.

(b) The ring shall be formed of ropes.

1. There shall be a minimum of three (3) ropes extended in a triple line at the following heights above the ring floor:

a. Twenty-four (24) inches;

b. Thirty-six (36) inches; and

c. Forty-eight (48) inches.

2. A fourth rope may be used if the inspector finds that it will not pose a health or safety concern.

3. The ropes shall be at least one (1) inch in diameter.

4. The ropes shall be wrapped in a clean, soft material and drawn taut.

5. The ropes shall be held in place with two (2) vertical straps on each of the four (4) sides of the ring.

6. The ropes shall be supported by ring posts that shall be:

a. Made of metal or other strong material;

b. Not less than three (3) inches in diameter; and

c. At least eighteen (18) inches from the ropes.

(c) The ring floor shall be padded or cushioned with a clean, soft material that:

1. Is at least one (1) inch thick and uses slow recovery foam matting;

2. Extends over the edge of the platform;

3. Is covered with a single canvas stretched tightly; and

4. Is, at the commencement of the event, clean, sanitary, dry, and free from:

a. Grit;

b. Dirt;

c. Resin; and

d. Any other foreign object or substance.

(d) A ring rope shall be attached to a ring post by turnbuckles padded with a soft vertical pad at least six (6) inches in width.

Section 6. Equipment.

(1) A bell or horn shall be used by the timekeeper to indicate the time.

(2) In addition to the ring and ring equipment, the promoter shall supply:

(a) A public address system in good working order;

(b) Chairs for judges and timekeepers elevated sufficiently to provide an unobstructed view of the ring and the ring floor;

(c) Items for each contestant's corner, to include:

1. A stool or chair;

2. A clean bucket;

3. Towels; and

4. Rubber gloves;

(d) A complete set of numbered round-cards, if needed;

(e) Gloves for each boxer or kickboxer; and

(f) A scale used for weigh-in, which shall be approved as accurate in advance by the inspector.

Section 7. Contestant Equipment and Attire.

(1) A contestant shall be clean and neatly attired in proper ring attire, and the trunks of opponents shall be of distinguishing colors.

(2) A contestant shall not use a belt that:

(a) Extends above the waistline of the contestant; or

(b) Contains any metal substance during a bout.

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(3) A contestant shall wear shoes during a bout. The shoes shall not be fitted with spikes, cleats, hard soles, or hard heels.

(4) A contestant shall wear a properly fitted:

- (a) Groin protector; and
- (b) Double-arch mouthpiece.

(5) If a contestant has long hair, the hair shall be secured by a soft, non-abrasive material so that the hair does not interfere with the vision or safety of either contestant.

(6) If cosmetics are used, a contestant shall use a minimum of cosmetics.

(7) Boxing gloves.

(a) Contestants shall wear boxing gloves that shall be of the same weight for each contestant and:

- 1. Dry, clean, and sanitary;
- 2. Furnished by the promoter;
- 3. Of equal weight, not to exceed twelve (12) ounces per glove;

4. A minimum of eight (8) ounces per glove for a contestant weighing no more than 154 pounds;

5. A minimum of ten (10) ounces per glove for a contestant weighing over 154 pounds; and

6. Thumbless or thumb-attached.

(b) Gloves shall be new for main events and for bouts and exhibitions scheduled for ten (10) or more rounds.

(c) Gloves shall be approved or denied in accordance with this administrative regulation by the commission prior to a bout.

(d) Gloves for all main events shall be dry and free from defects and shall be put on in the ring or locker room while supervised by the inspector.

(e) Breaking, roughing, or twisting of gloves shall not be permitted.

(f) The laces on gloves shall be tied on the back of the wrist and taped.

(g) Kickboxing contestants shall wear padded kickboxing boots. The padding shall be sufficient to protect the kickboxer and his or her competitor.

(8) Bandages.

(a) For boxing and kickboxing, only soft cotton or linen bandages shall be used for the protection of the boxer or kickboxer's hands.

(b) Bandages shall not be more than two (2) inches in width and twelve (12) yards in length for each hand.

(c) If adhesive tape is used:

1. Medical adhesive tape not more than one (1) inch in width shall be used to hold bandages in place;

2. Adhesive tape shall not be lapped more than one-eighth (1/8) of one (1) inch;

3. Adhesive tape not to exceed one (1) layer shall be crossed over the back of the hand for its protection; and

4. Three (3) strips of adhesive tape, lapping not to exceed one-eighth (1/8) of one (1) inch, may be used for protection of the knuckles.

(d) Hand wraps shall be applied in the dressing room in the presence of an inspector or ring official. The inspector or ring official shall sign the hand wrap and the tape around the strings of the gloves.

Section 8. Weight Classes.

(1) The class weights permitted in boxing and kickboxing bouts shall be as follows:

CLASS	WEIGHT
Flyweight	Up to 112 lbs.
Bantamweight	Up to 118 lbs.
Jr. Featherweight	Up to 122 lbs.
Featherweight	Up to 126 lbs.
Jr. Lightweight	Up to 130 lbs.
Lightweight	Up to 135 lbs.
Jr. Welterweight	Up to 140 lbs.
Welterweight	Up to 147 lbs.
Jr. Middleweight	Up to 154 lbs.
Middleweight	Up to 160 lbs.

Light Heavyweight	Up to 175 lbs.
Cruiserweight	Up to 195 lbs.
Heavyweight	Over 195 lbs.

(2) After the weigh-in, a contestant shall not change weight in excess of eight (8) percent prior to the bout.

(3) After the weigh-in, a contestant shall not re-hydrate by the use of intravenous fluids unless approved by the inspector for medical purposes. A contestant may be subject to a random urine specific gravity test to determine compliance with this subsection.

Section 9. Fight Length.

(1) Bouts and rounds shall:

(a) Be three (3) minutes in duration; and

(b) Have a one (1) minute rest period between rounds.

(2) A bout shall consist of no less than four (4) and no more than twelve (12) rounds. A championship bout shall be twelve (12) rounds in length.

(3) A contestant who has not fought within the last twelve (12) months shall not be scheduled to box or kickbox more than ten (10) rounds without commission approval.

Section 10. Judging and Scoring.

(1) Scoring shall be as established in this subsection.

(a) Each round shall be accounted for on the scorecard, using the ten (10) point system. Scoring shall be expressed in ratio of merit and demerit.

(b) Score cards shall be:

- 1. Signed;
- 2. Handed to the referee in the ring; and
- 3. Filed by the referee with the inspector.

(c) The decision shall then be announced from the ring.

(2) Decisions shall be rendered as established in this subsection.

(a) If a bout lasts the scheduled limit, the winner of the bout shall be decided by:

- 1. A majority vote of the judges, if three (3) judges are employed to judge the bout; or
- 2. A majority vote of the judges and the referee, if two (2) judges are employed to judge the bout.

(b) Decisions shall be based primarily on boxing or kickboxing effectiveness, with points awarded for display of the following attributes, and points deducted for an opposite showing:

- 1. Clean, forceful hitting;
- 2. Aggressiveness;
- 3. Defensive work; and
- 4. Ring generalship.

(c) The requirements governing knockdowns shall be as established in this paragraph.

1. If a contestant is knocked to the floor by the contestant's opponent, or falls from weakness or other causes, the contestant's opponent shall:

a. Immediately retire to the farthest neutral corner of the ring; and

b. Remain there until the referee completes the count or signals a resumption of action.

2. The timekeeper shall commence counting off the seconds and indicating the count with a motion of the arm while the contestant is down.

3. The referee shall pick up the count from the timekeeper.

4. If a contestant fails to rise to his or her feet before the count of ten (10), the referee shall declare the contestant the loser by waving both arms to indicate a knockout.

5. If a contestant who is down rises to his or her feet during the count, the referee may step between the contestants long enough to assure that the contestant just arisen is in condition to continue the bout.

6. If a contestant who is down arises before the count of ten (10) is reached, and again goes down from weakness or the effects of a previous blow without being struck again, the referee shall resume the count where he or she left off.

7. A standing eight (8) count shall be used at the discretion of the referee.

8. If a contestant is knocked down three (3) times during a

round, the bout shall be stopped. The contestant scoring the knockdowns shall be the winner by a technical knockout.

9. If a round ends before a contestant who was knocked down rises, the count shall continue, and if the contestant fails to arise before the count of ten (10), the referee shall declare the contestant knocked out.

(3) A contestant shall be considered down if:

(a) Any part of the contestant's body other than his or her feet is on the ring floor;

(b) The contestant is hanging helplessly over the ropes and in the judgment of the referee, is unable to stand; or

(c) The contestant is rising from the down position.

(4) Failure to resume a bout.

(a) If a contestant fails to resume the bout for any reason after a rest period, or leaves the ring during the rest period and fails to be in the ring when the bell rings to begin the next round, the referee shall count the contestant out the same as if the contestant were down in that round.

(b) If a contestant who has been knocked out of or has fallen out of the ring during a bout fails to return immediately to the ring and be on his or her feet before the expiration of ten (10) seconds, the referee shall count the contestant out as if the contestant were down.

Section 11. Fouls.

(1) The following shall be considered fouls:

(a) Hitting below the belt;

(b) Hitting an opponent who is down or who is getting up after having been down;

(c) Holding an opponent and deliberately maintaining a clinch;

(d) Holding an opponent with one (1) hand and hitting with the other;

(e) Butting with the head or shoulder or using the knee;

(f) Hitting with the inside, or butt, of the hand, the wrist, or the elbow;

(g) Hitting, or flicking, with the glove open or thumbing;

(h) Wrestling, or roughing, against the ropes;

(i) Purposely going down without having been hit;

(j) Deliberately striking at the part of an opponent's body over the kidneys;

(k) Using a pivot blow or rabbit punch;

(l) Biting of the opponent;

(m) Using abusive or profane language;

(n) Failing to obey the referee;

(o) Engaging in any unsportsmanlike trick or action that causes injury to another person;

(p) Hitting after the bell has sounded at the end of the round; or

(q) Backhand blows except in kickboxing.

(2)

(a) A contestant who commits a foul may be disqualified and the decision awarded to the opponent by the referee.

(b) The referee shall immediately disqualify a contestant who commits a deliberate and willful foul that prevents the opponent from continuing in the bout.

(c) The referee may take one (1) or more points away from a contestant who commits an accidental foul.

(3) A contestant committing a foul may be issued a violation by an inspector.

(4)

(a) If a bout is temporarily stopped by the referee due to fouling, the referee, with the aid of the physician, if necessary, shall decide if the contestant who has been fouled is in physical condition to continue the bout.

(b) If in the referee's opinion the contestant's chances have not been seriously jeopardized as a result of the foul, the referee shall order the bout resumed after a reasonable time set by the referee, but not exceeding five (5) minutes.

(5)

(a) If a contestant is unable to continue as the result of an accidental foul and the bout is in one (1) of the first three (3) rounds, the bout shall be declared a technical draw.

(b) If an accidental foul occurs after the third round, or if an

injury sustained from an accidental foul in the first three (3) rounds causes the bout to be subsequently stopped, the bout shall be scored on the basis of the judges' scorecards.

(6) If a bout is ended by reason of fouling or failure to give an honest demonstration of skill, as determined by an inspector or referee, the compensation of the offending contestant shall be withheld by the promoter.

Section 12. Prohibitions.

(1) The following shall be prohibited:

(a) Battle royal type events; and

(b) Use of excessive grease or other substance that may handicap an opponent.

(2) A contestant shall not engage at a show in boxing or sparring with a member of the opposite sex.

Section 13. Non-Contestant Participants.

(1) A promoter shall provide a minimum of two (2) security guards on the premises for each show.

(2) All ring officials shall be selected, licensed, and assigned to each show by the commission. For each show, a minimum of the following shall be required:

(a) A minimum of three (3) judges, or a minimum of two (2) judges if a referee also serves as a judge, and a maximum of five (5) judges;

(b) One (1) timekeeper;

(c) One (1) physician, except two (2) physicians shall be assigned to a bout designated a championship bout by a national sanctioning body recognized by the commission; and

(d) One (1) referee, unless the card has more than thirty (30) rounds, in which case a minimum of two (2) referees shall be required.

Section 14. Judges.

(1) A judge shall arrive at least one (1) hour prior to the start of a show.

(2) At the beginning of a bout, the judges shall locate themselves on opposite sides of the ring and shall carefully observe the performance of the contestants.

(3) At the conclusion of the bout, the judges shall render their decision based on the requirements of Section 10 of this administrative regulation.

(4) Upon request of the referee, the judges shall assist in determining:

(a) Whether or not a foul has been committed;

(b) Whether or not each contestant is competing in earnest; and

(c) Whether or not there is collusion affecting the result of the bout.

Section 15. Timekeeper.

(1) The timekeeper shall be seated outside the ring near the bell and shall take the cue from the referee to commence or take time out.

(2) The timekeeper shall be equipped with a whistle and a stop watch. Prior to the first bout, the inspector shall ensure that the whistle and stopwatch function properly.

(3) Ten (10) seconds before the start of each round, the timekeeper shall give notice by sounding the whistle.

(4) The timekeeper shall indicate the starting and ending of each round by striking the bell with a metal hammer.

(5) If a bout terminates before the scheduled limit, the timekeeper shall inform the announcer of the exact duration of the bout.

(6) Ten (10) seconds prior to the end of each round, the timekeeper shall give warning by striking a gavel three (3) times.

Section 16. Physicians and Healthcare Requirements.

(1) There shall be at least one (1) physician licensed by the commission at ringside at all times during a bout. A bout shall not begin or continue if a physician is not at ringside.

(2) The physician shall have general supervision over the physical condition of each contestant at all times while on the

premises of a show or exhibition.

(3) The physician's pre-bout duties:

(a) A physician shall make a thorough physical examination of each contestant within eight (8) hours prior to a bout.

1. The physician's examination shall include a review of the Boxing and Kickboxing Pre-Fight Medical Questionnaire of each contestant.

2. The physician shall deliver to the inspector the Boxing and Kickboxing Pre-Fight Examination form that documents the results of the examination prior to the contestant entering the ring.

(b) The physician shall ensure that all equipment required by subsection (5) of this section is present before the start of the first bout or exhibition.

(c) The physician shall prohibit a contestant from competing if the physician believes the contestant is physically unfit for competition or impaired by alcohol or a controlled substance.

(4) The physician's duties during the bout or exhibition:

(a) The physician shall remain at ringside during the progress of any bout or exhibition unless attending to a person.

(b) The physician shall observe the physical condition of each contestant during a bout.

(c) The physician shall administer medical aid if needed or requested.

(d) The physician shall order the referee to pause or end a bout or exhibition if necessary to prevent serious physical injury to a contestant.

(5) The physician shall have at ringside medical supplies necessary to provide medical assistance for the type of injuries reasonably anticipated to occur in a boxing or kickboxing show. The physician shall not permit a referee to begin a bout if the medical supplies are not present. At a minimum, these medical supplies shall include:

(a) A clean stretcher and blanket, placed under or adjacent to the ring throughout each bout;

(b) Spine board;

(c) Cervical collar;

(d) Oxygen apparatus or equipment; and

(e) First aid kit.

(6) The promoter shall ensure that a certified ambulance with an emergency medical technician is on the premises of a show at all times. A show shall not begin or continue if the ambulance and emergency medical technician are not on the premises.

(7) The physician shall make a thorough physical examination of each contestant after each bout. The physician shall deliver to the inspector the form Boxing and Kickboxing Post-Fight Examination that documents the results of the examination.

Section 17. Announcers.

(1) The announcer shall have general supervision over all announcements made to spectators.

(a) The announcer shall announce the name of contestants, their weight, decisions at the end of each bout, and any other matters as are necessary.

(b) A person other than the official announcer shall not make an announcement, unless deemed necessary by an inspector:

(2) If a bout is stopped before its scheduled termination, the announcer shall immediately confer with the referee and judges and then shall immediately announce the decision.

(3) The announcer shall not enter the ring during the actual progress of a bout.

Section 18. Referees.

(1) The referee shall be the chief official of the show, be present in the ring at all times, and have general supervision over each contestant, manager, and second during the entire event.

(2)

(a) The referee shall have the authority to disqualify a contestant who commits a foul and award the decision to the opponent.

(b) The referee shall immediately disqualify a contestant who commits an intentional or deliberate foul that causes serious physical injury to an opponent.

(3) The referee's duties and responsibilities shall be as

established in this subsection.

(a) The referee shall, before starting a bout, ascertain from each contestant the name of the contestant's chief second. The referee shall hold the chief second responsible for the conduct of the chief second's assistants during the progress of the bout.

(b) The referee shall call the contestants together in the ring immediately preceding a bout for final instructions. During the instructional meeting, each contestant shall be accompanied in the ring by the contestant's chief second only.

(c) The referee shall inspect the person, attire, and equipment of each contestant and make certain that no foreign substances that are prohibited by KRS Chapter 229 or 201 KAR Chapter 27 have been applied on a contestant's body or equipment or used by a contestant.

(d) The referee shall stop a bout at any time if the referee has grounds to believe either contestant is:

1. Unable to protect himself or herself from possible injury;

2. Not competing in earnest; or

3. Colluding with another person to affect the results of the bout.

(e) The referee may take one (1) or more points away from a contestant who commits an accidental foul, and the referee may permit a rest period not exceeding five (5) minutes for the contestant who was fouled.

(f) The referee shall not touch a contestant during the bout except upon failure of a contestant to obey the referee's orders or to protect a contestant.

(g) The referee shall decide all questions arising during a bout that are not otherwise specifically covered by KRS Chapter 229 or 201 KAR Chapter 27.

Section 19. Trainers and Seconds.

(1) A trainer or second shall be equipped with a first aid kit and the necessary supplies for proper medical attendance upon the contestant.

(2) There shall be no more than three (3) persons total serving as a trainer or second in any bout and only two (2) shall be allowed in the ring at the same time.

(3) A trainer and a second shall leave the ring at the timekeeper's ten (10) seconds whistle before the beginning of each round and shall remove all equipment from the ring. Equipment shall not be placed on the ring floor until after the bell has sounded at the end of the round or period.

(4) A trainer and a second shall wear surgical gloves at all times while carrying out their duties.

Section 20. Medical Prohibitions.

(1) The executive director, the executive director's designee, or a commission representative may issue an order for a medical suspension of a contestant's license under the following circumstances:

(a) A contestant who has been repeatedly knocked out and severely beaten shall be retired and not permitted to compete in unarmed combat again if, after subjecting the boxer or kickboxer to a thorough examination by a physician licensed by the commission, the medical advisory panel determines the action is necessary to protect the health and welfare of the contestant.

(b) If a contestant receives an injury to the head or body, the contestant's license may be suspended indefinitely. The ringside physician may require that a contestant suspended pursuant to this paragraph undergo a physical or neurological examination and submit a completed Medical Release Form or the Neurological Release Form as a condition of reinstatement.

(c)(2) A contestant who has suffered five (5) consecutive defeats by knockout or medical stoppage shall not be allowed to compete in unarmed combat until the contestant has been evaluated and subsequently cleared for further competition by the medical advisory panel.

(d)(3) A contestant who has been knocked out shall be prohibited from all competition for a minimum of sixty (60) days.

(e)(4) Any contestant who has suffered a technical knockout may be prohibited from competition for up to thirty (30) days if the contestant's health or safety would be jeopardized without the

prohibition.

(f) A contestant subject to an order levying a medical suspension may appeal the medical suspension by submitting a written notice of appeal to the Commission within twenty (20) days of the Commission's order. The provisions of KRS Chapter 13B shall govern the proceedings.

(2)(f)(a) A female boxer or kickboxer shall submit proof she is not pregnant prior to her bout. The proof may be either:

1. An original or certified copy of the result of a medical test taken no more than one (1) week before the day of the bout that shows she is not pregnant; or
2. From an over-the-counter home pregnancy test taken while on the premises of the show that tests for human chorionic gonadotropin.

(b) A female boxer or kickboxer shall be prohibited from competing if:

1. She is pregnant; or
2. She fails to comply with this subsection.

Section 21. Insurance.

(1) A promoter shall provide insurance for a contestant for any injuries sustained in the boxing or kickboxing show.

(2) The minimum amount of coverage per contestant shall be \$5,000 health and \$5,000 accidental death benefits.

(3) A certificate of insurance coverage shall be provided to the commission no less than two (2) business days before the event.

(4) The deductible expense under the policy for a contestant shall not exceed \$1,000.

Section 22. Other Provisions.

(1) A promoter shall maintain an account with the recognized national database as identified by the commission and submit contestant's names to that database upon approval of the show date. The promoter shall be responsible for the costs associated with the use of this service.

(2) All shows shall be video recorded and retained by the promoter for at least for one (1) year. Upon request of the commission, the promoter shall provide the video recording of a show to the commission.

(3) Smoking shall be prohibited inside the gymnasium, room, or hall in which the ring is located.

(4) Alcohol shall be prohibited inside the six-foot area alongside the ring.

Section 23. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Boxing & Kickboxing Show Notice Form", June 2023[November, 2019];

(b) "Boxing & Kickboxing Pre-Fight Medical Questionnaire", June 2023[November, 2019];

(c) "Boxing & Kickboxing Pre-Fight Examination", June 2023[November, 2019]; [and]

(d) "Boxing & Kickboxing Post-Fight Examination", June 2023[November, 2019];[.]

(e) "Boxing & Kickboxing Medical Release Form", June 2023; and

(f) "Boxing & Kickboxing Neurological Evaluation Form", June 2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Boxing and Wrestling Commission office at 500 Mero St, 218NC, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., and is available online at https://kbwc.ky.gov/New_Docs.aspx?cat=29&menuid=27 [<http://kbw a.ky.gov/Pages/Appsforms.aspx>].

This is to certify that the Kentucky Boxing and Wrestling Commission has reviewed and reviewed and recommended this administrative regulation, as required by KRS 229.025 and KRS 229.171.

MATT BYRD, Executive Director
RAY A. PERRY, Secretary

APPROVED BY AGENCY: June 14, 2023

FILED WITH LRC: June 15, 2023 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, August 24, 2023, at 1:00 PM Eastern Time at the Mayo-Underwood Building, Room 133CE, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Doug Hardin, Staff Attorney, Kentucky Boxing and Wrestling Commission, 500 Mero Street 218 NC, Frankfort, Kentucky 40601, phone (502) 782-8204, fax (502) 573-6625, email doug.hardin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Doug Hardin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes general requirements for boxing and kickboxing shows.

(b) The necessity of this administrative regulation: This regulation is necessary so that the Boxing & Wrestling Commission may establish standards for unarmed combat shows in Kentucky, which are authorized pursuant to KRS 229.025.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 229.025 authorizes and requires the Commission to promulgate administrative regulations for licensing participants, officials, and physicians for unarmed combat shows.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Boxing & Wrestling Commission is charged with the responsibility of licensing and regulating unarmed combat shows. This administrative regulation establishes the process and forms necessary for licensure of participants, officials, and physicians. The regulation further establishes standards for compensation, pre-fight procedures, ring size, equipment and attire, weight classes, fight length, judging and scoring, and insurance.

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

(a) How the amendment will change this existing administrative regulation: This amendment corrects some typographical errors and amends the minimum fee scale for referees, timekeepers, judges, bout assistants, and physicians. It further updates the medical suspension section to establish a process for the Commission to indefinitely suspend injured contestants and for the contestants to appeal those suspensions. The amendment also incorporates medical forms to be used in the evaluation of injured contestants to aid in the Commission's determination of whether to reinstate a suspended contestant's license.

(b) The necessity of the amendment to this administrative regulation: The adjusted fee scheduled is designed to ensure that these officials receive fair compensation for services rendered. The medical suspension provisions and associated forms are necessary to ensure that boxing and kickboxing contestants who are injured undergo a proper examination and only return to competition when it is safe to do so.

(c) How the amendment conforms to the content of the authorizing statutes: These amendments conform to the content of the authorizing statute because this regulation sets forth licensing requirements as permitted by KRS 229.025

(d) How the amendment will assist in the effective administration of the statutes: The adjusted fee scheduled is designed to ensure that these officials receive fair compensation for services rendered. The new medical forms are designed to give the Commission and ringside officials adequate information to ensure that a contestant is healthy enough to compete.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of February 2023, the Boxing & Wrestling Commission licenses and regulates over 900 licensees that will be affected by this administrative regulation, as follows:

Over 679 licensed contestants (includes boxers, kickboxers, amateur missed martial artists, professional mixed martial artists, wrestlers,);

Over 185 licensed non-contestants (includes judges, trainers, managers, referees, timekeepers, and seconds);

Over 6 licensed medical providers (includes physicians and healthcare professionals);

Over 40 licensed promoters.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensed promoters would be required to provide more compensation for referees, physicians, judges, timekeepers, and bout assistants. Physicians would be required to complete and submit the medical forms 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 existing administrative regulation contains fees for licensure, which the amendment does not increase. Promoters will be required to increase compensate certain officials consistent with the fee schedule established in Section 3.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The licensees mentioned in the fee scale will receive additional compensation. Additional compensation may result in higher quality officials and physicians. The medical oversight and examinations required will help ensure that contestants only enter competition when they are healthy enough to compete.

(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 Commission to implement this administrative regulation initially.

(b) On a continuing basis: There will be no additional cost to the Commission to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no additional funding necessary to implement this amendment to the administrative regulation.

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

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

(9) TIERING: Is tiering applied? The compensation required for the various licensees is tiered based on the number of bouts that the official or physician will oversee.

implementing this regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 229.025, 229.031, 229.055, 229.111, 229.131, 229.155, 229.171, 15 U.S.C. 6304, 6305(a), (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? This administrative regulation is not intended to generate revenue for any state or local government agency.

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

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

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

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation is not intended to generate cost savings for regulated entities in the first year, except that certain licensed charitable gaming facilities will have a reduced annual fee if they do not host regularly scheduled bingo sessions.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation is not intended to generate cost savings for regulated entities in the first year.

(c) How much will it cost the regulated entities for the first year? This administrative regulation is not intended to generate costs for regulated entities in the first year.

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

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

Cost Savings (+/-): None

Expenditures (+/-): None

Other Explanation: None

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. This administrative regulation is not intended or anticipated to have a major economic impact as defined by KRS 13A.010(13).

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 Boxing & Wrestling Commission is the agency responsible for

VOLUME 50, NUMBER 1– JULY 1, 2023

PUBLIC PROTECTION CABINET Kentucky Boxing and Wrestling Commission (Amendment)

201 KAR 27:012. General requirements for wrestling shows.

RELATES TO: KRS 229.021, 229.031, 229.071, 229.081, 229.091, 229.171, EO 2016-270

STATUTORY AUTHORITY: KRS 229.021, 229.031, 229.071, 229.081, 229.091, 229.171, 229.180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) authorizes the authority to exercise sole jurisdiction over all boxing, kickboxing, mixed martial arts, and wrestling shows, exhibitions, and licensees in the Commonwealth[commonwealth]. Executive Order 2016-270, effective May 16, 2016, abolished the Kentucky Boxing and Wrestling Authority and established the Kentucky Boxing and Wrestling Commission. This administrative regulation establishes the requirements for wrestling shows and for participants in wrestling shows.

Section 1. Show Date Request and Advertising.

(1) A promoter shall request a show date by completing and submitting to the commission the Wrestling Show Notice Form [which is incorporated by reference in 201 KAR 27:011, Section 23(1)(a)].

(2) The Wrestling Show Notice Form shall be submitted to the commission for approval no less than ten (10) calendar days before the requested show date.

(3) A promoter shall not advertise the show until the date has been approved by the commission. Approval is effective upon the commission:

(a) Placing the event on the Calendar of Events available on the commission's Web site at https://kbwc.ky.gov/ppc_boxing/Ecal.aspx [<http://ins.kbwa.ky.gov/eeal.asp>]; or

(b) Providing written notice that the event is approved.

Section 2. Cancellations.

(1) A contestant who has committed to participate in a professional match and is unable to participate shall notify the promoter of the inability to participate as soon as possible.

(2) Absent good cause shown, failure to notify the promoter of an inability to participate in a wrestling match at least six (6) hours before the beginning of the match may constitute grounds for issuance of a penalty.

Section 3. Security Required. The promoter shall provide a minimum of two (2) security guards on the premises for each show.

Section 4. Locker Rooms.

(1) A person shall not be permitted in the locker room unless the person holds a license or has been granted permission by the promoter or inspector.

(2) Male and female contestants shall have separate locker rooms.

Section 5. Drug Testing.

(1) (a) The commission may request a licensee to submit to a drug test. A drug test shall be at the licensee's expense.

(b) The presence of controlled substances within a licensee for which the licensee does not have a prescription, or the refusal by the licensee to submit to the test, shall result in a penalty pursuant to 201 KAR 27:105.

(2) From arrival at the venue to the conclusion of the show or exhibition, a licensee shall not consume, possess, or participate under the influence of alcohol or another substance that may affect the licensee's ability to participate.

Section 6. Pregnancy. A female shall be prohibited from competing in a wrestling show if she is pregnant.

Section 7. Requirements for the Area Surrounding the Wrestling Ring. A border shall be placed at least six (6) feet from all sides of the ring. Spectator seating shall not be allowed between the border and ringside without prior inspector approval.

Section 8. Foreign Objects and Props.

(1) A person shall not use a foreign object on another person during a match without the prior consent of both contestants.

(2) A person shall not use or direct another person to use pyrotechnics, glass, or fire on himself, herself, or another person during a match.

Section 9. Blood and Simulated Blood.

(1) The promoter shall notify the commission on the Show Notice Form required by Section 1 of this administrative regulation if a contestant plans to bleed during a show.

(2) The promoter shall arrange for a healthcare professional to be present at any show where bleeding by a wrestler is planned.

(a) The healthcare professional shall observe the show at all times during a match where bleeding by a wrestler is planned.

(b) The healthcare professional shall be equipped with a first aid kit.

(3) Prior to any show in which a wrestler plans to bleed or in which simulated blood will be used, the promoter or the promoter's designee shall inform the inspector and the healthcare professional of when in the match and how the bleeding or simulated bleeding will occur.

(4) Any wrestler who plans to bleed during a match shall submit to the commission an original or certified copy of his or her HIV Antibody, Hepatitis B Antigen, and Hepatitis C Antibody test results prior to the beginning of the show.

(a) The results of these tests shall be no more than 180 days old.

(b) A person with a positive test result for HIV, Hepatitis B, or Hepatitis C shall not be licensed and shall not compete.

(5) A wrestling match shall be stopped immediately if a wrestler bleeds who has not submitted to the commission an original or certified copy of his or her HIV Antibody, Hepatitis B Antigen, and Hepatitis C Antibody test results taken from within the last 180 days that shows that the wrestler is negative for HIV, Hepatitis B, and Hepatitis C.

(6) The commission shall be notified immediately if a contestant bleeds during a match in which notice of intended bleeding was not given in accordance with subsection (1) of this section.

(a) The video recording required by Section 10 of this administrative regulation shall be sent to the commission within five (5) business days.

(b) If the commission determines that the bleeding was not accidental, the contestant and promoter shall be issued a violation.

Section 10. Video Recording.

(1) The promoter shall ensure that a video recording of each show is made. A copy of the video recording shall be retained by the promoter for at least one (1) year.

(2) The promoter shall provide the video recording of a show to the commission upon request.

Section 11. Incorporation by Reference.

(1) "Wrestling Show Notice Form", June 2023, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Boxing and Wrestling Commission office at 500 Mero St, 218NC, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., and is available online at https://kbwc.ky.gov/New_Docs.aspx?cat=29&menuid=27.

This is to certify that the Kentucky Boxing and Wrestling Commission has reviewed and recommended this administrative regulation, as required by KRS 229.025 and KRS 229.171.

MATT BYRD, Executive Director

RAY A. PERRY, Secretary

APPROVED BY AGENCY: June 14, 2023

FILED WITH LRC: June 15, 2023 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, August 24, 2023, at 1:00 PM Eastern Time at the Mayo-Underwood Building, Room 133CE, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Doug Hardin, Staff Attorney, Kentucky Boxing and Wrestling Commission, 500 Mero Street 218 NC, Frankfort, Kentucky 40601, phone (502) 782-8204, fax (502) 573-6625, email doug.hardin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Doug Hardin, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes general requirements for wrestling shows.

(b) The necessity of this administrative regulation: This regulation is necessary so that the Boxing & Wrestling Commission may establish standards for unarmed combat in Kentucky, which are authorized pursuant to KRS 229.025.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 229.025 authorizes and requires the Commission to promulgate administrative regulations for licensing participants, officials, and physicians for unarmed combat shows.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Boxing & Wrestling Commission is charged with the responsibility of licensing and regulating unarmed combat shows. This administrative regulation establishes the process and forms necessary for licensure of participants, officials, and physicians. The regulation further establishes standards for compensation, pre-fight procedures, ring size, equipment and attire, weight classes, fight length, judging and scoring, and insurance.

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

(a) How the amendment will change this existing administrative regulation: This amendment incorporates a Wrestling Show Notice Form by reference and updates the URL for the Commission's calendar of events.

(b) The necessity of the amendment to this administrative regulation: The Commission requires promoters to submit a Show Notice Form when scheduling wrestling shows. This form was not previously incorporated by reference into this regulation.

(c) How the amendment conforms to the content of the authorizing statutes: These amendments conform to the content of the authorizing statute because this regulation sets forth licensing requirements as permitted by KRS 229.025

(d) How the amendment will assist in the effective administration of the statutes: An incorporated form will assist the Commission in licensing and regulating wrestling shows.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of February 2023, the Boxing & Wrestling Commission licenses and regulates over 900 licensees that will be affected by this administrative regulation, as follows:

Over 679 licensed contestants (includes boxers, kickboxers, amateur mixed martial artists, professional mixed martial artists, wrestlers, and elimination event contestants);

Over 185 licensed non-contestants (includes judges, trainers, managers, referees, timekeepers, and seconds).

Over 6 licensed medical providers (includes physicians and healthcare professionals)

Over 40 licensed promoters

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensed promoters would be required to submit a Wrestling Show Notice Form to put on a wrestling show.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This particular regulation does not impose any fees on licensees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees will be able to download, complete, and submit a uniform form for all wrestling shows.

(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 Commission to implement this administrative regulation initially.

(b) On a continuing basis: There will be no additional cost to the Commission to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no additional funding necessary to implement this amendment to the administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation does not impose fees.

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 Boxing & Wrestling Commission is the agency responsible for implementing this regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 229.025, 229.031, 229.055, 229.111, 229.131, 229.155, 229.171,

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

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

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

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

(d) How much will it cost to administer this program for

subsequent years? There is no cost to administer this administrative regulation for subsequent years.

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

Revenues (+/-): None
Expenditures (+/-): None
Other Explanation: None

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation is not intended to generate cost savings for regulated entities in the first year, except that certain licensed charitable gaming facilities will have a reduced annual fee if they do not host regularly scheduled bingo sessions.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation is not intended to generate cost savings for regulated entities in the first year.

(c) How much will it cost the regulated entities for the first year? This administrative regulation is not intended to generate costs for regulated entities in the first year.

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

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

Cost Savings (+/-): None
Expenditures (+/-): None
Other Explanation: None

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. This administrative regulation is not intended or anticipated to have a major economic impact as defined by KRS 13A.010(13).

PUBLIC PROTECTION CABINET
Kentucky Boxing and Wrestling Commission
(Amendment)

201 KAR 27:016. General requirements for mixed martial arts matches, shows, or exhibitions.

RELATES TO: KRS 229.025, 229.031, 229.055, 229.111, 229.131, 229.155, 229.171,

STATUTORY AUTHORITY: KRS 229.025, 229.031, 229.111, 229.131, 229.171,

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) authorizes the Kentucky Boxing and Wrestling Commission to exercise sole direction, management, control, and jurisdiction over all unarmed combat shows in the Commonwealth. KRS 229.171(2) authorizes the commission to promulgate administrative regulations it considers necessary or expedient for the performance of its functions provided in KRS Chapter 229. KRS 229.025 requires every licensee to be subject to administrative regulations promulgated by the commission. This administrative regulation establishes the requirements for mixed martial arts shows and for participants in mixed martial arts shows.

Section 1. Show Date.

(1) A promoter shall request a show date by completing and submitting to the commission the Mixed Martial Arts Show Notice Form, which is incorporated by reference in 201 KAR 27:011, Section 23(1)(a).

(2) The Mixed Martial Arts Show Notice Form shall be

submitted for approval no less than thirty (30) calendar days before the requested show date.

(3) A promoter shall not advertise a show until the date has been approved by the commission. Approval is effective upon the commission:

(a) Placing the event on the Calendar of Events available on the commission's Web site at https://kbwc.ky.gov/ppc_boxing/Ecal.aspx [<http://ins.kbwa.ky.gov/ecal.aspx>]; or

(b) Providing written notice that the event is approved.

Section 2. Program and Changes.

(1) If a contestant is unable to participate in a show for which the contestant has a contract, the contestant shall immediately notify the promoter and the commission. A contestant with repeated and unexcused absences or cancellation [~~a cancellation~~] shall be assessed [~~result in~~] a violation.

(2) The proposed card for a show shall be filed with the commission at least five (5) business days prior to the show date. Notice of a change in a program or substitution in a show shall be immediately filed with the commission.

(3) If the commission determines that a proposed bout may not be reasonably competitive, the bout may be denied. Bout approval does not exempt contestants [~~contestant~~] from individual physical approval as required by 201 KAR 27:008, Section 3. The commission's determination shall be based upon the contestants' previous fighting experience, including:

- (a) The number of bouts the contestants have competed in;
- (b) The number of rounds the contestants have competed in;
- (c) The date of the contestants' bouts;
- (d) The contestants' performance in previous bouts, including the contestants' won-loss record;
- (e) The level of competition the contestants have faced; and
- (f) The contestants' medical histories.

(4) The final approved card for a show shall comprise a minimum of five (5) complete bouts, no later than two (2) business days prior to the show date.

Section 3. Compensation.

(1) If a show or exhibition is cancelled with less than twenty-four (24) hours' notice to the commission, ring officials shall be paid one-half (1/2) the compensation agreed upon prior to the bout.

(2) Before the commencement of a show or exhibition, the promoter shall tender to the inspector payment to each ring official. The schedule of compensation for a ring official shall be at least as established in this section. If a ring official serves both as a referee and as a judge under Section 13(2)(a) of this regulation, the official shall receive pay for both referee and judge services as established in this section. If a referee also serves as a judge other than as an in-ring judge, the referee shall only receive compensation as a referee as established in this section.

(a) A judge shall be paid at least the amount set by the following schedule based on the number of bouts on the show card: [\$150 unless the show card has twelve (12) or fewer bouts, in which case each judge's pay shall be \$100;]

1. One (1) to eleven (11) bouts, \$125;
2. Twelve (12) or more bouts, \$175.

(b) A timekeeper shall be paid at least the amount set by the following schedule based on the number of bouts on the show card: [\$100 unless the show card has twelve (12) or fewer bouts, in which case the timekeeper's pay shall be seventy-five (75) dollars;]

1. One (1) to eleven (11) bouts, \$100;
2. Twelve (12) or more bouts, \$125.

(c) A physician shall be paid at least the amount set by the following schedule based on the number of bouts on the show card: [\$350;]

1. One (1) to eleven (11) bouts, \$400; and
2. Twelve (12) or more bouts, \$500.

(d) A referee shall be paid at least the amount set by the following schedule based on the number of bouts on the show card: [\$150; and]

1. One (1) to eleven (11) bouts, \$175;
2. Twelve (12) or more bouts, \$225.

(e) A bout assistant shall be paid at least the amount set by the following schedule based on the number of bouts on the show card: [seventy-five (75) dollars.]

1. One (1) to eleven (11) bouts, seventy-five (75) dollars; and
2. Twelve (12) or more bouts, \$100.

(3) Each contestant's compensation agreement shall be in writing and submitted to the commission for approval not less than two (2) calendar days prior to the date of the proposed show.

Section 4. Pre-Fight.

(1) A contestant shall weigh in stripped at a time set by the commission, which shall not be more than thirty-six (36) hours before the first scheduled bout of the show.

(a) A contestant shall produce to the inspector one (1) form of picture identification at the weigh-in.

(b) The inspector and the promoter or a representative of the promoter conducting the show shall be in attendance to record the official weights.

(2) A contestant shall check in with the commission at least one (1) hour prior to the event start time. A contestant shall produce one (1) form of picture identification at check-in.

(3) A contestant shall attend a pre-fight meeting as directed by the commission.

(4)

(a) A contestant shall remain in the locker room area until it is time to compete unless approved by the inspector.

(b) The promoter shall supply a separate locker room for males and females.

(5) A contestant shall submit an original or certified copy of his or her HIV Antibody, Hepatitis B Antigen, and Hepatitis C Antibody test results to the commission at least forty-eight (48) hours prior to the event.

(a) The results of these tests shall be no more than 365 days old.

(b) A person with a positive test result shall not compete.

(6) A contestant shall undergo a pre-fight physical conducted by a physician within eight (8) hours of the show. Prior to undergoing the physical, a contestant shall submit a completed Mixed Martial Arts Pre-Fight Medical Questionnaire, which is incorporated by reference in 201 KAR 27:011, Section 23(1)(b), under penalty of perjury.

(7) A contestant shall not assume or use the name of another and shall not change his or her ring name nor be announced by any name other than that appearing on his or her license, except upon approval of the inspector.

(8) A contestant shall report to and be under the general supervision of the inspector in attendance at the show and shall be subject to instructions given by the inspector.

Section 5. The Cage.

(1) The area between the cage and the first row of spectators on all sides and the locker room shall be under the exclusive control of the commission.

(2) Commission staff and licensees shall be the only people allowed inside the areas under the control of the commission.

(3) There shall be an area of at least six (6) feet between the edge of the cage floor and the first row of spectator seats on all sides of the cage. A partition, barricade, or similar divider shall be placed:

(a) Between the first row of the spectator seats and the six (6) foot area surrounding the cage; and

(b) Along the sides of the entry lane for contestants to enter the cage and the spectator area.

(4) A bout or exhibition of mixed martial arts shall be held in a fenced area meeting the requirements established in this subsection.

(a) The fenced area shall be circular or have equal sides and shall be no smaller than twenty (20) feet wide and no larger than thirty-two (32) feet wide.

(b) The floor of the fenced area shall be padded with closed-cell foam, with at least a one (1) inch layer of foam padding, with a top covering of a single canvas or a synthetic material stretched tightly and laced to the platform of the fenced area, unless the

event is held outdoors, in which case only canvas shall be used.

(c) The platform of the fenced area shall not be more than six (6) feet above the floor of the building and shall have steps suitable for the use of the contestants.

(d) Fence posts shall be made of metal, shall not be more than six (6) inches in diameter, and shall extend from the floor of the building to between five (5) and seven (7) feet above the floor of the fenced area, and shall be properly padded.

(e) The fencing used to enclose the fenced area shall be made of a material that shall prevent a contestant from falling out of the fenced area or breaking through the fenced area onto the floor of the building or onto the spectators, and the fencing shall be coated with vinyl or a similar covering to minimize injuries to a contestant.

(f) Any metal portion of the fenced area shall be properly covered and padded and shall not be abrasive to the unarmed combatants.

(g) The fenced area shall have at least one (1) entrance.

(h) There shall not be a protrusion or obstruction on any part of the fence surrounding the area in which the contestants are to be competing.

(i) Any event held outdoors while the heat index is or exceeds 100 degrees Fahrenheit shall be conducted under a roof or cover that casts shade over the entire cage.

(j) A cage shall have a canvas mat or a synthetic material, unless the event is held outdoors, in which case only canvas shall be used.

Section 6. Equipment.

(1) A bell or horn shall be used by the timekeeper to indicate the time.

(2) In addition to the cage and cage equipment, the promoter shall supply:

(a) A public address system in good working order;

(b) Chairs for judges and timekeepers elevated sufficiently to provide an unobstructed view of the cage and the cage floor;

(c) Items for each contestant's corner, to include:

1. A stool or chair;

2. A clean bucket;

3. Towels;

4. Rubber gloves; and

(d) A complete set of numbered round-cards, if needed.

(3) A scale used for any weigh-in shall be approved as accurate in advance by the inspector.

Section 7. Contestant Equipment and Attire.

(1) A contestant shall be clean and neatly clothed in proper ring attire, and the trunks of opponents shall be of distinguishing colors.

(2) A contestant shall not use a belt that contains a metal substance during a bout. The belt shall not extend above the waistline of the contestant.

(3) A contestant shall not wear shoes or any padding on his or her feet during the bout.

(4) A contestant shall wear a properly fitted:

(a) Groin protector; and

(b) Double-arch mouthpiece.

(5) If a contestant has long hair, the hair shall be secured by a soft, non-abrasive material so that the hair does not interfere with the vision or safety of either contestant.

(6) If cosmetics are used, a contestant shall use a minimum of cosmetics.

Section 8. Weight Classes.

(1) The classes for contestants competing in bouts or exhibitions of mixed martial arts and the weights for each class shall be as established in the following schedule:

CLASS	WEIGHT
Strawweight	Up to and including 115 lbs.
Flyweight	Over 115 lbs. up to and including 125 lbs.
Bantamweight	Over 125 lbs. up to and including 135 lbs.

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Featherweight	Over 135 lbs. up to and including Up to 145 lbs.
Lightweight	Over 145 lbs. up to and including Up to 155 lbs.
Super Lightweight	Over 155 lbs. up to and including 165 lbs.
Welterweight	Over 165 lbs. up to and including Up to 170 lbs.
Super Welterweight	Over 170 lbs. up to and including 175 lbs.
Middleweight	Over 175 lbs. up to and including Up to 185 lbs.
Super Middleweight	Over 185 lbs. up to and including 195 lbs.
Light Heavyweight	Over 195 lbs. up to and including 205 lbs. Up to 195 lbs.
Cruiserweight	Over 205 lbs. up to and including 225 lbs.
Heavyweight	Over 225 lbs. up to and including 265 lbs. Up to 230 lbs.
Super Heavyweight	Over 265 230 lbs.

(2) After the weigh-in, a contestant shall not change weight in excess of eight (8) percent prior to the bout.

(3) After the weigh-in, a contestant shall not re-hydrate by the use of intravenous fluids unless approved by the inspector for medical purposes. A contestant may be subject to a random urine specific gravity test to determine compliance with this subsection.

Section 9. Fight Length. Unless the commission approves an exception upon finding that the health and safety of the contestants will not be compromised:

(1) A non-championship bout or exhibition of mixed martial arts shall not exceed three (3) rounds in duration;

(2) A championship bout of mixed martial arts shall not exceed five (5) rounds in duration;

(3) The length of a round in a professional bout or exhibition of mixed martial arts shall be a maximum of five (5) minutes in duration, and a period of rest following a round shall be one (1) minute in duration; and

(4) The length of a round in an amateur bout or exhibition of mixed martial arts shall be a maximum of three (3) minutes in duration, and a rest period following a round shall be ninety (90) seconds in duration.

Section 10. Judging and Scoring.

(1) Each judge of a bout or exhibition of mixed martial arts shall score the bout or exhibition and determine the winner through the use of the system established in this section.

(a) The better contestant of a round shall receive ten (10) points, and the opponent shall receive proportionately less.

(b) If the round is even, each contestant shall receive ten (10) points.

(c) Fraction of points shall not be given.

(d) Points for each round shall be awarded immediately after the end of the period of unarmed combat in the round.

(2) After the end of the bout or exhibition, the announcer shall pick up the scores of the judges from the commission's representative.

(3) The majority opinion shall be conclusive and, if there is no majority, the decision shall be a draw.

(4)

(a) Once the commission's representative has checked the scores, he or she shall inform the announcer of the decision.

(b) The announcer shall then inform the audience of the decision.

(5) Unjudged exhibitions shall be permitted with the prior approval of the commission.

(6) A bout of mixed martial arts shall end in:

(a) Submission by:

1. Physical tap out; or

2. Verbal tap out;

(b) Technical knockout by the referee or physician stopping the bout;

(c) Decision via the scorecards, including:

1. Unanimous decision;

2. Split decision;

3. Majority decision; or

4. Draw, including:

a. Unanimous draw;

b. Majority draw; or

c. Split draw;

(d) Technical decision;

(e) Technical draw;

(f) Disqualification;

(g) Forfeit; or

(h) No contest.

Section 11. Fouls.

(1) The following acts shall constitute fouls in mixed martial arts:

(a) Butting with the head;

(b) Eye gouging;

(c) Biting;

(d) Hair pulling;

(e) Fishhooking;

(f) Groin attacks;

(g) Putting a finger into any orifice or into any cut or laceration on an opponent;

(h) Small joint manipulation;

(i) Striking to the spine or the back of the head;

(j) Striking downward using the point of the elbow;

(k) Throat strikes including grabbing the trachea;

(l) Clawing, pinching, or twisting the flesh;

(m) Grabbing the clavicle;

(n) Kicking the head of a grounded opponent;

(o) Kneeing the head of a grounded opponent;

(p) Stomping the head of a grounded opponent;

(q) Kicking to the kidney with the heel;

(r) Spiking an opponent to the canvas on his or her head or neck;

(s) Throwing an opponent out of the fenced area;

(t) Holding the shorts of an opponent;

(u) Spitting at an opponent;

(v) Engaging in unsportsmanlike conduct;

(w) Holding the fence;

(x) Using abusive language in the fenced area;

(y) Attacking an opponent on or during the break;

(z) Attacking an opponent who is under the care of the referee;

(aa) Attacking an opponent after the bell has sounded the end of the period of unarmed combat;

(bb) Intentionally disregarding the instructions of the referee;

(cc) Timidity, such as intentionally or consistently dropping the mouthpiece or faking an injury;

(dd) Interference by a contestant's corner staff; and

(ee) The throwing by a contestant's corner staff of objects into the cage during competition.

(2) If a contestant fouls his or her opponent during a bout or exhibition of mixed martial arts, the referee may penalize the contestant by deducting points from his or her score, regardless of whether or not the foul was intentional. The referee shall determine the number of points to be deducted in each instance and shall base his or her determination on the severity of the foul and its effect upon the opponent.

(3) If the referee determines that it is necessary to deduct a point or points because of a foul, he or she shall warn the offender of the penalty to be assessed.

(4) The referee shall, as soon as is practical after the foul, notify the judges and both contestants of the number of points, if any, to be deducted from the score of the offender.

(5) Any point or points to be deducted for any foul shall be deducted in the round in which the foul occurred and shall not be deducted from the score of any subsequent round.

(6)

(a) If a bout or exhibition of mixed martial arts is stopped because of an accidental foul, the referee shall determine if the contestant who has been fouled is able to continue.

(b) If the contestant's chance of winning has not been seriously jeopardized as a result of the foul, and if the foul does not involve a concussive impact to the head of the contestant who has been fouled, the referee may order the bout or exhibition continued after a recuperative interval of not more than five (5) minutes.

(c) Immediately after separating the contestants, the referee shall inform the commission's representative of his or her determination that the foul was or was not accidental.

(7) If the referee determines that a bout or exhibition of mixed martial arts shall not continue because of an injury suffered as the result of an accidental foul, the bout or exhibition shall be declared a no bout if the foul occurs during:

(a) The first two (2) rounds of a bout or exhibition that is scheduled for three (3) rounds or less; or

(b) The first three (3) rounds of a bout or exhibition that is scheduled for more than three (3) rounds.

(8) If an accidental foul renders a contestant unable to continue the bout or exhibition, the outcome shall be determined by scoring the completed rounds, including the round in which the foul occurs, if the foul occurs after:

(a) The completed second round of a bout or exhibition that is scheduled for three (3) rounds or less; or

(b) The completed third round of a bout or exhibition that is scheduled for more than three (3) rounds.

(9) If an injury inflicted by an accidental foul later becomes aggravated by fair blows and the referee orders the bout or exhibition stopped because of the injury, the outcome shall be determined by scoring the completed rounds and the round during which the referee stops the bout or exhibition.

(10) A contestant committing an intentional foul may be issued a violation by an inspector.

Section 12. Prohibitions. The following shall be prohibited:

(1) Battle royal type events; and

(2) Use of excessive grease or other substance that may handicap an opponent.

Section 13. Non-Contestant Participants.

(1) A promoter shall provide a minimum of two (2) security guards on the premises for each show.

(2) Judges, physicians, referees, and timekeepers shall be selected, licensed, and assigned to each show by the commission. The following shall be required:

(a) Three (3) judges, or two (2) judges if a referee also serves as a judge;

(b) One (1) timekeeper;

(c) One (1) physician, unless more than eighteen (18) bouts are scheduled, in which case a minimum of two (2) physicians shall be required; and

(d) One (1) referee, unless more than eight (8)~~eighteen (18)~~ bouts are scheduled, in which case a minimum of two (2) referees shall be required.

Section 14. Judges.

(1) A judge shall arrive at least one (1) hour prior to the start of a show.

(2) At the beginning of a bout, the judges shall locate themselves on opposite sides of the ring and shall carefully observe the performance of the contestants.

(3) At the conclusion of the bout, the judges shall render their decision based on the requirements of Section 10 of this administrative regulation.

(4) Upon request of the referee, the judges shall assist in determining whether or not:

(a) A foul has been committed;

(b) Each contestant is competing in earnest; and

(c) There is collusion affecting the result of the bout.

Section 15. Timekeeper.

(1) The timekeeper shall be seated outside the ring near the bell and shall take the cue to commence or take time out from the referee.

(2) The timekeeper shall be equipped with a whistle and a stop watch. Prior to the first bout, the inspector shall ensure that the whistle and stopwatch function properly.

(3) Ten (10) seconds before the start of each round, the timekeeper shall give notice by sounding the whistle.

(4) The timekeeper shall indicate the starting and ending of each round by sounding a horn or striking the bell with a metal hammer.

(5) If a bout terminates before the scheduled limit, the timekeeper shall inform the announcer of the exact duration of the bout.

(6) Ten (10) seconds prior to the end of each round, the timekeeper shall give warning by striking a gavel three (3) times.

Section 16. Physicians and Healthcare Requirements.

(1) There shall be at least one (1) physician licensed by the commission at ringside at all times during a bout. A bout shall not begin or continue if a physician is not at ringside.

(2) The physician shall have general supervision over the physical condition of each contestant at all times while on the premises of a show or exhibition.

(3) The physician's pre-bout duties:

(a) A physician shall make a thorough physical examination of each contestant within eight (8) hours prior to a bout.

1. The physician's examination shall include a review of the Mixed Martial Arts Pre-Fight Medical Questionnaire of each contestant.

2. The physician shall deliver to the inspector the form Mixed Martial Arts Pre-Fight Examination, ~~[which is incorporated by reference in 201 KAR 27:011, Section 23(1)(e)]~~ that documents the results of the examination prior to the contestant entering the ring.

(b) The physician shall ensure that all equipment required by subsection (5) of this section is present before the start of the first bout or exhibition.

(c) The physician shall prohibit a contestant from competing if the physician believes the contestant is physically unfit for competition or impaired by alcohol or a controlled substance.

(4) The physician's duties during the bout or exhibition:

(a) The physician shall remain at ringside during the progress of any bout or exhibition unless attending to a person.

(b) The physician shall observe the physical condition of each contestant during a bout or match.

(c) The physician shall administer medical aid if needed or requested.

(d) The physician shall order the referee to pause or end a bout or exhibition if necessary to prevent serious physical injury to a contestant.

(5) The physician shall have at ringside medical supplies necessary to provide medical assistance for the type of injuries reasonably anticipated to occur in a mixed martial arts show. The physician shall not permit a referee to begin a bout if the medical supplies are not present. At a minimum, these medical supplies shall include:

(a) A clean stretcher and blanket, placed under or adjacent to the ring throughout each bout;

(b) Spine board;

(c) Cervical collar;

(d) Oxygen apparatus or equipment; and

(e) First aid kit.

(6) The promoter shall ensure that a certified ambulance with an emergency medical technician is on the premises of a show at all times. A show shall not begin or continue if the ambulance and emergency medical technician are not on the premises.

(7) The physician shall make a thorough physical examination of each contestant after each bout. The physician shall deliver the form Mixed Martial Arts Post-Fight Examination ~~[which is incorporated by reference in 201 KAR 27:011, Section 23(1)(d)]~~ that documents the results of the examination.

Section 17. Announcers.

(1) The announcer shall have general supervision over all announcements made to spectators.

(a) The announcer shall announce the name of contestants, their weight, decisions at the end of each match or bout, and any other matters as are necessary.

(b) A person other than the official announcer shall not make an announcement, unless deemed necessary by an inspector.

(2) If a match or bout is stopped before its scheduled termination, the announcer shall immediately confer with the referee and judges and then shall immediately announce the decision.

(3) The announcer shall not enter the ring during the actual progress of a match or bout.

Section 18. Referees.

(1) The referee shall be the chief official of the show, be present in the ring at all times, and have general supervision over each contestant, manager, and second during the entire event.

(2)

(a) The referee shall have the authority to disqualify a contestant who commits a foul and award the decision to the opponent.

(b) The referee shall immediately disqualify a contestant who commits an intentional or deliberate foul that causes serious physical injury to an opponent.

(3) The referee's duties and responsibilities shall be as established in this subsection.

(a) The referee shall, before starting a bout or match, ascertain from each contestant the name of the contestant's chief second. The referee shall hold the chief second responsible for the conduct of the chief second's assistants during the progress of the bout or match.

(b) The referee shall call the contestants together in the ring immediately preceding a bout or match for final instructions. During the instructional meeting, each contestant shall be accompanied in the ring by the contestant's chief second only.

(c) The referee shall inspect the person, attire, and equipment of each contestant and make certain that no foreign substances that are prohibited by KRS Chapter 229 or 201 KAR Chapter 27 have been applied on a contestant's body or equipment or used by a contestant.

(d) The referee shall stop a bout or match at any time if the referee has reasonable grounds to believe either contestant is:

1. Unable to protect himself or herself from possible injury;
2. Not competing in earnest; or
3. Colluding with another person to affect the results of the bout.

(e) The referee may take one (1) or more points away from a contestant who commits an accidental foul, and the referee may permit a rest period not exceeding five (5) minutes for the contestant who was fouled.

(f) The referee shall not touch a contestant during the bout or match except upon failure of a contestant to obey the referee's instructions or to protect a contestant.

(g) The referee shall decide all questions arising during a bout or match that are not otherwise specifically covered by KRS Chapter 229 or 201 KAR Chapter 27.

(h) Events scheduled to include more than eight (8) bouts shall require the presence of at least two (2) referees. One referee shall be designated to oversee each bout.

Section 19. Trainers and Seconds.

(1) A trainer or second shall be equipped with a first aid kit and the necessary supplies for proper medical attendance upon the contestant.

(2) There shall be no more than three (3) persons total serving as a trainer or second in any bout and only two (2) shall be allowed in the ring at the same time.

(3) A trainer and a second shall leave the ring at the timekeeper's ten (10) seconds whistle before the beginning of each round and shall remove all equipment from the ring. Equipment

shall not be placed on the ring floor until after the bell has sounded at the end of the round or period.

(4) A trainer and a second shall wear surgical gloves at all times while carrying out their duties.

Section 20. Medical Prohibitions.

(1) The executive director, the executive director's designee, or a commission representative may issue an order for a medical suspension of a contestant's license under the following circumstances:

(a) A contestant who has been repeatedly knocked out and severely beaten shall be retired and not permitted to compete again if, after subjecting the contestant to a thorough examination by a physician licensed by the commission, the medical advisory panel determines action is necessary to protect the health and welfare of the contestant.

(b) If a contestant receives an injury to the head or body, the contestant's license may be suspended indefinitely. The ringside physician may require that a contestant suspended pursuant to this paragraph undergo a physical or neurological examination and submit a completed Medical Release Form or the Neurological Release Form as a condition of reinstatement.

(c)(2) A contestant who has suffered five (5) consecutive defeats by knockout or medical stoppage shall not be allowed to compete again until the contestant has been evaluated and subsequently cleared for further competition by the medical advisory panel.

(d)(3) A contestant who has been knocked out shall be prohibited from all competition for a minimum of sixty (60) days.

(e)(4) Any contestant who has suffered a technical knockout may be prohibited from competition for up to thirty (30) days if the contestant's health or safety would be jeopardized without the prohibition.

(f) A contestant subject to an order levying a medical suspension may appeal the medical suspension by submitting a written notice of appeal to the Commission within twenty (20) days of the Commission's order. The provisions of KRS Chapter 13B shall govern the proceedings.

(2)(5)(a) A female mixed martial artist shall submit proof she is not pregnant prior to her bout. The proof may be either:

1. An original or certified copy of the result of a medical test taken no more than one (1) week before the day of the match that shows she is not pregnant; or
2. From an over-the-counter home pregnancy test taken while on the premises of the show that tests for human chorionic gonadotropin.

(b) A female mixed martial artist shall be prohibited from competing if:

1. She is pregnant; or
2. She fails to comply with this subsection.

Section 21. Insurance.

(1) A promoter shall provide insurance for a contestant for any injuries sustained in the mixed martial arts event.

(2) The minimum amount of coverage per contestant shall be \$5,000 health and \$5,000 accidental death benefits.

(3) A certificate of insurance coverage shall be provided to the commission no less than two (2) business days before the event.

(4)

(a) The deductible expense under the policy for a professional mixed martial artist shall not exceed \$1,000.

(b) The deductible expense for an amateur mixed martial artist shall not exceed \$500.

Section 22. Other Provisions.

(1) A contestant shall not compete against a member of the opposite gender.

(2) Each show shall be video recorded and retained by the promoter for at least one (1) year. Upon request of the commission, the promoter shall provide the video recording of a show to the commission.

(3) A promoter shall maintain an account with the recognized national database as identified by the commission and shall submit

contestants[~~contestants~~] names to that database upon approval of the show date. The promoter shall be responsible for the costs associated with the use of this service.

(4) A bout or exhibition of mixed martial arts shall be conducted pursuant to the official rules for the particular art unless the official rules conflict with KRS Chapter 229 or 201 KAR Chapter 27.

(a) If an official rule conflicts with KRS Chapter 229 or a requirement in 201 KAR Chapter 27, the statute or administrative regulation shall prevail.

(b) The sponsoring organization or promoter shall file a copy of the rules that shall apply at the show with the commission along with the thirty (30) day show notice required in Section 1 of this administrative regulation.

(5) A contestant shall report to and be under the general supervision of an inspector in attendance at the show and shall be subject to instructions given by an inspector.

(6) More than two (2) fifteen (15) minute intermissions shall not be allowed at any show.

Section 23. Prohibitions and Restrictions.

(1) The following shall be prohibited:

(a) Battle royal type events;

(b) Use of excessive grease or other substance that may handicap an opponent; and

(c) Elbow strikes to the head if the bout is an amateur bout.

(2) Knees to the head shall be permitted, but shall only be used and delivered from a standing position.

(3) A professional mixed martial arts contestant found to be competing during an amateur mixed martial arts show shall have his or her license suspended for a period of not less than one (1) year.

(4) A promoter who allows a professional to compete against an amateur shall have his or her license suspended for a period of not less than one (1) year.

(5) Smoking shall be prohibited inside the gymnasium, room, or hall in which the ring is located.

(6) Alcohol shall be prohibited inside the six (6) foot area alongside the ring.

Section 24. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Mixed Martial Arts Show Notice Form", June 2023;

(b) "Mixed Martial Arts Pre-Fight Medical Questionnaire", June 2023;

(c) "Mixed Martial Arts Pre-Fight Medical Examination", June 2023;

(d) "Mixed Martial Arts Post-Fight Examination", June 2023;

(e) "Mixed Martial Arts Medical Release Form", June 2023;

(f) "Mixed Martial Arts Neurological Evaluation Form", June 2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Boxing and Wrestling Commission office at 500 Mero St, 218NC, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., and is available online at https://kbwc.ky.gov/New_Docs.aspx?cat=29&menuid=27.

This is to certify that the Kentucky Boxing and Wrestling Commission has reviewed and recommended this administrative regulation, as required by KRS 229.025 and KRS 229.171.

MATT BYRD, Executive Director

RAY A. PERRY, Secretary

APPROVED BY AGENCY: June 14, 2023

FILED WITH LRC: June 15, 2023 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, August 24, 2023, at 1:00 PM Eastern Time at the Mayo-Underwood Building, Room 133CE, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to

attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Doug Hardin, Staff Attorney, Kentucky Boxing and Wrestling Commission, 500 Mero Street 218 NC, Frankfort, Kentucky 40601, phone (502) 782-8204, fax (502) 573-6625, email doug.hardin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Doug Hardin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes general requirements for mixed martial arts matches, shows, and exhibitions.

(b) The necessity of this administrative regulation: This regulation is necessary so that the Boxing & Wrestling Commission may establish standards for unarmed combat shows in Kentucky, which are authorized pursuant to KRS 229.025.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 229.025 authorizes and requires the Commission to promulgate administrative regulations for licensing participants, officials, and physicians for unarmed combat shows.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Boxing & Wrestling Commission is charged with the responsibility of licensing and regulating unarmed combat shows. This administrative regulation establishes the process and forms necessary for licensure of participants, officials, and physicians. The regulation further establishes standards for compensation, pre-fight procedures, ring size, equipment and attire, weight classes, fight length, judging and scoring, and insurance.

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

(a) How the amendment will change this existing administrative regulation: This amendment corrects some typographical errors and amends the minimum fee scale for referees, timekeepers, judges, bout assistants, and physicians. It further updates the medical suspension section to establish a process for the Commission to indefinitely suspend injured contestants and for the contestants to appeal those suspensions. The amendment also incorporates medical forms to be used in the evaluation of injured contestants to aid in the Commission's determination of whether to reinstate a suspended contestant's license.

(b) The necessity of the amendment to this administrative regulation: The adjusted fee scheduled is designed to ensure that these officials receive fair compensation for services rendered. The medical suspension provisions and associated forms are necessary to ensure that boxing and kickboxing contestants who are injured undergo a proper examination and only return to competition when it is safe to do so.

(c) How the amendment conforms to the content of the authorizing statutes: These amendments conform to the content of the authorizing statute because this regulation sets forth licensing requirements as permitted by KRS 229.025.

(d) How the amendment will assist in the effective administration of the statutes: The adjusted fee scheduled is designed to ensure that these officials receive fair compensation for services rendered. The new medical forms are designed to give the Commission and ringside officials adequate information to ensure that a contestant is healthy enough to compete.

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

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administrative regulation: As of February 2023, the Boxing & Wrestling Commission licenses and regulates over 900 licensees that will be affected by this administrative regulation, as follows:

Over 679 licensed contestants (includes boxers, kickboxers, amateur missed martial artists, professional mixed martial artists, wrestlers, and elimination event contestants);

Over 185 licensed non-contestants (includes judges, trainers, managers, referees, timekeepers, and seconds) for exempt charitable gaming organizations;

Over 6 licensed medical providers (includes physicians and healthcare professionals);

Over 40 licensed promoters.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensed promoters would be required to provide more compensation for referees, physicians, judges, timekeepers, and bout assistants. Physicians would be required to complete and submit the medical forms 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 existing administrative regulation contains fees for licensure, which the amendment does not increase. Promoters will be required to increase compensate certain officials consistent with the fee schedule established in Section 3.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The licensees mentioned in the fee scale will receive additional compensation. Additional compensation may result in higher quality officials and physicians.

(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 Commission to implement this administrative regulation initially.

(b) On a continuing basis: There will be no additional cost to the Commission to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no additional funding necessary to implement this amendment to the administrative regulation.

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

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

(9) TIERING: Is tiering applied? The compensation required for the various licensees is tiered based on the number of bouts that the official or physician will oversee.

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 Boxing & Wrestling Commission is the agency responsible for implementing this regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 229.025, 229.031, 229.055, 229.111, 229.131, 229.155, 229.171, 15 U.S.C. 6304, 6305(a), (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?

This administrative regulation is not intended to generate revenue for any state or local government agency.

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

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

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

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation is not intended to generate cost savings for regulated entities in the first year, except that certain licensed charitable gaming facilities will have a reduced annual fee if they do not host regularly scheduled bingo sessions.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation is not intended to generate cost savings for regulated entities in the first year.

(c) How much will it cost the regulated entities for the first year? This administrative regulation is not intended to generate costs for regulated entities in the first year.

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

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

Cost Savings (+/-): None

Expenditures (+/-): None

Other Explanation: None

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. This administrative regulation is not intended or anticipated to have a major economic impact as defined by KRS 13A.010(13).

KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES (Amendment)

202 KAR 7:555. Ground agencies.

RELATES TO: KRS 311A.030, 311A.190, 29 C.F.R. 1910.1030

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030, 311A.190

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.020 requires the Board of Emergency Medical Services to exercise all administrative functions in the regulation of the EMS system and the licensing of ambulance services and medical first response agencies, except those regulated by the Board of Medical Licensure[Emergency Medical Services] or the Cabinet for Health and Family Services. KRS 311A.030 requires the board to promulgate administrative regulations for the licensing, inspection,

and regulation of ambulance providers and medical first response agencies. This administrative regulation establishes minimum licensing requirements.

Section 1. Utilization of Ground Vehicles by Class I, II, III, and IV Licensed Agencies.

(1) At the time of initial inspection, each agency shall inform the Kentucky Board of Emergency Medical Services (KBEMS) office of the make, model, year, vehicle identification number or serial number, and license tag number for each vehicle the agency plans to use for medical care and transportation.

(2) A vehicle shall not be placed into operation until the board has conducted a physical inspection of the vehicle and determined it meets the requirements of 202 KAR Chapter 7.

(3) Each agency shall complete a Vehicle Delete application in the Kentucky Emergency Medical Services Information System (KEMSIS), no later than the next business day after the permanent removal of any licensed vehicle from service by the license holder.

(4)(a) A licensed agency may use a replacement vehicle that meets all of the requirements of 202 KAR Chapter 7 on a temporary basis while a permitted vehicle is out of service. The agency shall complete an Add TEMPORARY Vehicle/Aircraft Part 1 application in KEMSIS within twenty-four (24) hours of the replacement.

(b) A temporary replacement vehicle shall not be used for more than thirty (30) days annually unless the KBEMS office has verified, through a physical inspection, that it meets the requirements of 202 KAR Chapter 7.

(5) The KBEMS office shall be notified by a completed Add TEMPORARY Vehicle/Aircraft Part 2 application in KEMSIS within twenty-four (24) hours or on the next business day if a temporary vehicle is removed from service and the original licensed vehicle is returned to service.

(6)(a) An agency that fails to report using a temporary vehicle shall be required to immediately cease use of the replacement vehicle until the reporting requirements are met.

(b) An agency that fails to remove a temporary vehicle from service after thirty (30) days shall be fined \$500 for each day or partial day the vehicle is in service and not reported.

(7) This administrative regulation shall not prevent a licensed agency from utilizing other means of transporting patients in:

(a) Disasters;

(b) Mass casualty incidents; or

(c) Extraordinary scene conditions that would impair access to the safety or care of the patient or personnel operating at the scene.

Section 2. Provider Management Requirements.

(1) All licensed agencies shall maintain:

(a) An organizational chart that establishes lines of authority, including the designation of:

1. An administrator responsible for assuring compliance with KRS Chapter 311A and 202 KAR Chapter 7 during the daily operation of the service; and

2. A designee who shall serve in the absence of the administrator;

(b) Records and reports at the ambulance agency base station including:

1. An original, electronic equivalent, or copy of all patient care records consistent with the U.S. Department of Transportation National Highway Traffic Safety Administration (NHTSA) National Emergency Medical Services Information System (NEMSIS) data dictionary found at www.nemsis.org/technical-resources/version-3;

2. An electronic copy of all completed patient care reports, which shall be maintained to ensure confidentiality and safekeeping for at least seven (7) years from the date on which the service was rendered, or in the case of a minor, at least three (3) years after the minor reaches the age of majority; and

3. Copies of Patient Care Reports for the preceding twelve (12) months, which shall be accessible and be immediately available to the board, KBEMS office, or representatives upon request;

(c) Personnel files for each employee or volunteer who staffs a vehicle of a licensed agency. Personnel files shall be maintained

for at least one (1) year following separation from employment. As a minimum, all personnel files shall contain:

1. A pre-employment and annual criminal background check administered by the Kentucky Administrative Office of the Courts;

2. A copy of the employee's valid KBEMS certification or licensure card; and

3. A copy of each employee's completion of the National Incident Management System (NIMS) Incident Command System (ICS) 100, 200, 700, and 800 courses;

(d) A policy for the provision of a pre-employment and annual health assessment of employees of the agency, which shall include reporting mechanisms for work-related illness or injury;

(e) A written plan for providers to consult with online adult and pediatric medical direction. This plan shall address as a minimum:

1. The availability of medical direction twenty-four (24) hours a day, seven (7) days a week;

2. The availability of medical direction during an emergency event;

3. The provision of medical direction by a medical professional with a higher level of training or expertise; and

4. Recommended actions if:

a. There is an equipment failure, a communication barrier, or other unusual circumstance; and

b. It is not possible to contact online medical direction

(f) A plan and records for the provision of continuing education for staff and volunteers, including:

1. A written plan for the method of assessment of staff continuing education needs; and

2. A coordinated plan to meet those needs, including a provision that all continuing education shall be provided either by a licensed TEI or in accordance with 202 KAR 7:601;

(g) An infection control plan in accordance with 29 C.F.R. 1910.1030;

(h) A written plan for training or educating personnel for responding to hazardous materials, criminal, and potential terrorist incidents, including plans for the protection and decontamination of patients, ambulances, equipment, and staff;

(i) A written policy regarding the appropriate destination of a patient who expires during transport if a valid Kentucky EMS Do Not Resuscitate (DNR), or Medical Orders for Scope of Treatment (MOST) form is present;

(j) A written plan for the quality assessment of patient care and provider quality improvement, including a monthly review of patient care reports and evaluation of staff performance related to patient care. This plan shall address as a minimum:

1. Employee health and safety;

2. Compliance with protocols and operating procedures;

3. Assessment of dispatch protocols;

4. Vehicle operations and vehicle safety;

5. Additional training necessary for the patient care provider or providers;

6. Equipment preventive maintenance programs; and

7. A process for the resolution of customer complaints;

(k) A written plan for training personnel and responding to mass casualty incidents and disasters;

(l) A written orientation program for all personnel, including at a minimum:

1. Validation of certification or license with KBEMS;

2. Validation of the National Incident Management System (NIMS) Incident Command System (ICS) 100, 200, 700, and 800 courses within sixty (60) days of employment for any employee who staffs a licensed vehicle;

3. Validation of Driver's License if applicable;

4. A review of all agency policies, procedures, and protocols;

5. Communication equipment at the base station and on each vehicle;

6. Operational aspects of the agency fleet and equipment;

7. Inspection and routine maintenance of agency fleet, facilities, and equipment;

8. Appropriate processes for disinfection of agency fleet, facilities, and equipment;

9. Local navigation and geographic orientation; and

10. Completion of Patient Care Reports and other

documentation as established by the agency;

(m) Proof of professional liability malpractice insurance of a minimum of \$1,000,000; and

(n) Proof of vehicular liability insurance.

(2) Each agency shall notify the board at least twenty-four (24) hours prior to the transfer of coverage, cancellation, lapse, or other cessation or change in professional liability malpractice insurance or vehicular liability insurance.

(3) Each agency shall verify valid staff certification or licensure as of the first day of the calendar year.

(4) If ceasing to operate, an agency shall provide the board with the physical storage location of all Patient Care Reports within five (5) business days of closure. These reports shall be maintained by the owner of the licensed agency, or a contracted third party to meet the timeline established in subsection (1)(b) of this section.

(5) Each agency that allows an employed emergency responder to provide medical services while off duty in accordance with 202 KAR 7:701, Section 6, shall maintain and implement a policy regarding which employees are approved to provide medical services off duty by the agency's medical director and the manner in which worker's compensation and general liability insurance covers employees off duty. The policy shall be signed by both the agency's administrator and medical director, shall be reviewed annually, and shall include:

(a) Direction on which employees may remove medical equipment from the agency's premises for the purpose of providing care off duty;

(b) Direction on which equipment may be removed from the agency's premises for the purpose of providing care off duty; and

(c) A provision that controlled substances shall not be removed from the agency's premises for the purposes of providing care off duty.

(6) Each agency shall in the county in which the agency's base station or a satellite is located:

(a) Document evidence of participation in a local, county, regional, or state disaster or preparedness exercise within the preceding twelve (12) months;

(b) Coordinate with the county emergency management director plans for the possible use of agency personnel for use in the emergency operations center in a disaster; and

(c) Maintain a hard copy or electronic equivalent of the most current adopted city, county, or urban county government emergency management agency's emergency operations plan at the ambulance base station.

Section 3. Operating Requirements. (1) Each licensed agency, except Class IV and VIII, shall provide service twenty-four (24) hours a day, seven (7) days a week. Class IV and VIII agencies shall operate during the hours of operation for their geographical service area or designated event.

(2) Each licensed agency shall retain staffing schedules for at least the previous twelve (12) months.

(3) Each agency administrator or designee shall be familiar with emergency management reporting and procurement processes and software platforms utilized to communicate the needs of the local government to state agencies.

~~[(4) A licensed Class I, II, III, VI, or VII agency that ceases to provide continuous service on a twenty-four (24) hour basis shall surrender its license to the board's office within twenty-four (24) hours of the agency ceasing to provide continuous service.]~~

~~[(4)](5) A licensed agency shall have a written plan to assure all requests for service shall be promptly answered.~~

~~[(5)](6) A licensed agency shall have a written scope of care policy to include the types of services performed, limitations of response, and the types of medical teams provided.~~

~~[(6)](7) Any agency licensed and located within the geographical service area that determines it is unable to have a vehicle responding within ten (10) minutes from the initial time an emergency call is received [from the dispatch center] shall request that [notify] the next closest appropriate licensed agency [to] respond.~~

~~(7) If an agency licensed for a specific geographical service~~

area is unable to respond to a non-emergency call within two (2) hours from the initial time a non-emergency call is received, the requesting healthcare facility may contact any licensed agency and request that the agency conduct the transport.

(8) An agency shall enter into a mutual aid agreement with another Kentucky licensed ambulance agency operating within the same or contiguous counties that provide response to medical emergencies. These agreements shall be in writing and address:

(a) The type of mutual aid assistance to be provided, including advanced life support (ALS) or basic life support (BLS) medical care and transport and ALS or BLS medical first response;

(b) Response personnel, including levels of training or education and provisions for joint in-service training or education if appropriate;

(c) Response vehicles, including unit identifiers and the station or location from which the vehicles shall be operated;

(d) A plan of action for the mutual aid agreement, including dispatch and notification procedures;

(e) Radio and other communications procedures between the ambulance agency and other response agencies with which the agency has mutual aid agreements;

(f) On-scene coordination and scene control including medical direction if several agencies respond to the same incident;

(g) Exchange of patient information, records, and reports as allowed by law; and

(h) The effective dates and process for amendment or termination.

(9) A ground agency shall send a written request for a mutual aid agreement to at least two (2) contiguous counties and retain a copy of each request and each county's response;

(10) Each agency shall maintain a policy or affiliation agreement with the primary call-taking center that provides dispatch services for all or part of the service area of the ground agency. The agreement shall state at a minimum that:

(a) Requests for emergency ambulance service shall be dispatched or notified within two (2) minutes from determining that the caller is requesting ambulance response;

(b) If the closest licensed agency for that geographic service area is unable to have a vehicle responding to an emergency call within ten (10) minutes from the time the call is dispatched, the agency shall notify the next closest appropriate licensed agency to respond; and

(c) The agreement shall specify which patient information shall be collected by the call-taking center during a call for service.

(11) If a ground agency is unable to secure a written affiliation agreement with the dispatch center, the ground agency shall retain all written correspondence to the dispatch center requesting an affiliation agreement and the dispatch center's denial of the agency's request.

(12) An agency shall not respond to requests for emergency service outside of its licensed geographic service area without first receiving authorization from the licensed agency in the geographic service area in which the request originates.

(13) A licensed Class I ground agency that is located in a geographical service area containing multiple destination hospitals, with regard to the furnishing of 911 response and transportation, shall not engage in:

(a) Exclusive or coercive practices regarding transportation decisions with regard to any affiliated hospital or hospital emergency department;

(b) Preferential transportation to any affiliated hospital emergency department if the transports are not justified by time, place, patient convenience, or other objective factors affecting a patient;

(c) Noncompetitive transportation to any affiliated hospital emergency department; or

(d) Transports to any affiliated hospital emergency department if that hospital is not the closest to the patient location or most appropriate based on the availability of particular services or patient preference.

(14) Each licensed Class I ground agency shall schedule a minimum of one (1) staffed ambulance to be staged in the agency's geographic service area.

~~(15)~~~~(44)~~ An agency that cannot meet the timelines established in subsection (10) of this section shall contact another licensed agency and receive an estimated time of arrival to the request for service. If the mutual aid agency can arrive at the location where the request originated more quickly than the agency licensed for the geographic service area, the agency licensed for the geographic service area shall request mutual aid from its neighboring agency to respond to the call.

~~(16)~~~~(45)~~ An agency shall not refuse a request for emergency pre-hospital response if a unit is available in its geographic service area.

~~(17)~~~~(46)~~ An agency shall not exhaust its resources by answering a nonemergency call or for response to mutual aid requests.

~~(18)~~~~(47)~~ This administrative regulation shall not be construed to prevent a licensed agency from providing medical first response emergency or nonemergency pre-hospital care at or below the level for which the agency is licensed through the use of designated agency-owned response vehicles.

~~(19)~~~~(48)~~ A communications system shall be developed, coordinated, and maintained by each licensed agency. The communication system shall comply with paragraphs (a) through (f) of this subsection.

(a) Radio equipment used in emergency medical services vehicles shall be appropriately licensed through the Federal Communications Commission (FCC). Copies of the current FCC licenses shall be on file in the agency office.

(b) Each ambulance shall have an operational push-to-talk two-way radio programmed with all very high frequency (VHF) Kentucky State Mutual Aid Frequencies in accordance with the Commonwealth of Kentucky Field Operations Guide (KY-FOG).

(c) Each ambulance shall be equipped with a minimum of one (1) mobile two-way radio located in the driver's compartment.

(d) Each ambulance shall have a minimum of two (2) portable push-to-talk two-way radios capable, under normal conditions, of operating on the agency, dispatch center, mutual aid, and hospital frequencies.

(e) Each ambulance shall be equipped with two-way radio communication equipment with the ability to communicate from the driver's compartment and patient care compartment.

(f) One (1) alternative method of two-way communication may be substituted for one (1) portable two-way radio.

Section 4. Ceasing Continuous Service.

(1) A licensed Class I, II, III, VI, or VII agency that ceases to provide continuous service on a twenty-four (24) hour basis shall surrender its license to the board office within twenty-four (24) hours of the agency ceasing to provide continuous service.

(2) The agency's chief operations or service director shall immediately contact the executive director of the board upon determining that his or her Class I, II, III, VI, or VII agency will cease providing continuous service, and shall provide the approximate date and time that the agency will cease continuous service.

(3) The agency's chief operations or service director shall immediately contact the executive director of the board upon determining that his or her Class I, II, III, VI, or VII agency has ceased providing continuous service, and shall provide the date and time that the agency ceased continuous service.

(4) Notwithstanding subsection (1) of this section and Section 3(1) of this administrative regulation, a Class I, II, III, VI, or VII agency shall resume continuous service no later than seventy-two (72) hours after ceasing continuous service if the executive director of the board determines, in writing, that:

(a) Circumstances beyond the agency's control exist which justify the agency's temporary lapse in continuous service; and

(b) Public health, safety, and welfare will be better served by allowing the agency to resume continuous service within seventy-two (72) hours after ceasing continuous service.

(5) A licensed Class I, II, III, VI, or VII agency that ceases continuous service shall be deemed to pose a threat to the public and the agency's license shall be temporarily suspended in accordance with KRS 311A.075 if:

(a) The agency fails to surrender its license in accordance with subsection (1) of this section; and

(b) The executive director of the board does not make the determinations set forth in subsection (4)(a) and (b) of this section; or

(c) The executive director of the board makes the determinations set forth in subsection (4)(a) and (b) of this section, but the agency fails to resume continuous service within seventy-two (72) hours after ceasing continuous service and fails to surrender its license to the board office within seventy-two (72) hours after ceasing continuous service.

Section 5. Issuance of Temporary Class I Hardship Licenses to Counties.

(1) The board office shall issue a temporary Class I hardship license to the county or counties listed as the geographic service area on a Class I license that:

(a) Is the only Class I license for the geographic service area; and

(b) Is surrendered in accordance with Section 4(1) of this administrative regulation; or

(c) Is temporarily suspended in accordance with Section 4 of this administrative regulation and KRS 311A.075.

(2) A temporary hardship license shall not be transferrable.

(3) A county issued a temporary hardship license may contract with a licensed Class I agency to provide service to the geographic service area listed on the temporary hardship license.

(4) Notwithstanding Sections 3(1) and 4(1) of this administrative regulation, a county issued a temporary hardship license shall begin providing continuous service no later than 120 days after the license is issued.

(5) Notwithstanding any other administrative regulation promulgated by the board, for up to and not exceeding 120 days after a temporary hardship license is issued to a county under this section, the county may request that any licensed Class I agency respond to a call for service in the geographic service area listed on the temporary hardship license.

(6) A temporary hardship license shall expire one (1) year after the license is issued, after a new Class I license for the geographic service area is issued, or, if the Class I license for the geographic service area was temporarily suspended in accordance with Section 4 of this administrative regulation, after that license is reinstated, whichever occurs first.

Section 6. Medical Directors. (1) Each licensed agency shall have a medical director who meets the requirements established in 202 KAR 7:801.

(2) A licensed agency shall notify KBEMS within twenty-four (24) hours of a decision to discontinue a medical director agreement by either the agency or the medical director.

(3)(a) If an agency is found to be operating without a medical director, the agency shall be provided emergency medical direction by the KBEMS Medical Advisor for a fee of \$100 per day for the first thirty (30) calendar days the agency is without a medical director.

(b) The fee shall increase to \$500 per day after thirty (30) calendar days.

Section 7.[Section 5.] Public Notice of Negative Action. The board office shall cause to be published, on the KBEMS web site or similar publication of the board, the name of any licensed agency that is fined, placed on probationary status, placed on restricted status, suspended, or had a license revoked.

Section 8.[Section 6.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Commonwealth of Kentucky Field Operations Guide (KY-FOG)", (6/2012) found at <https://kwiec.ky.gov/SiteCollectionDocuments/KYFOG.pdf>;

(b) "NHTSA NEMSIS Data Dictionary", (v3.40) U.S. Department of Transportation National Highway Traffic Safety Administration (NHTSA) National Emergency Medical Services Information System (NEMSIS) data dictionary found at

https://www.nemsis.org/media/nemsis_v3/3.4.0.150302/DataDictionary/PDFHTML/DEMMS/NEMSISDataDictionary.pdf;

- (c) "Vehicle Delete application in KEMSIS", (12/2019);
- (d) "Add TEMPORARY Vehicle/Aircraft application Part 1 in KEMSIS", (12/2019); and
- (e) "Add TEMPORARY Vehicle/Aircraft application Part 2 in KEMSIS", (12/2019).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 500 Mero Street, 5th Floor 5SE32, Frankfort, Kentucky 40601 [448 James Court, Suite 60, Lexington, Kentucky 40505], Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material is also available on the board's Web site at: kyems.com.

JOHN R. HOLDER, Board Chair

APPROVED BY AGENCY: April 13, 2023

FILED WITH LRC: May 22, 2023 at 2:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2023 at 1:00 p.m. ET at the Kentucky Board of Emergency Medical Services, 500 Mero Street, 5th Floor 5SE32, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023. 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: John K. Wood, Legal Counsel, Kentucky Board of Emergency Medical Services, 163 E. Main Street, Suite 200, Lexington, Kentucky 40507, phone (859) 225-4714, email administrativeregulations@wgmfirm.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John K. Wood

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the licensure requirements for ambulance providers and medical first response agencies.

(b) The necessity of this administrative regulation: KRS 311A.020 requires the Board of Emergency Medical Services to exercise all administrative functions in the regulation of the EMS system and the licensing of ambulance services and medical first response agencies, except those regulated by the Board of Medical Licensure or the Cabinet for Health and Family Services. KRS 311A.030 requires the Board to promulgate administrative regulations for the licensing, inspection, and regulation of ambulance providers and medical first response agencies. This administrative regulation is necessary to establish licensure requirements for ambulance providers and medical first response agencies.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 311A.020 and 311A.030 by establishing licensure requirements for ambulance providers and medical first response agencies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 311A.020 requires the Board of Emergency Medical Services to exercise all administrative functions in the regulation of the EMS system and the licensing of ambulance services and medical first response agencies, except those regulated by the Board of Medical Licensure or the Cabinet for Health and Family Services. KRS

311A.030 requires the Board to promulgate administrative regulations for the licensing, inspection, and regulation of ambulance providers and medical first response agencies. This administrative regulation assists in the effective administration of those statutes by establishing licensure requirements for ambulance providers and medical first response agencies.

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

(a) How the amendment will change this existing administrative regulation: This amendment provides the Board a mechanism to temporarily suspend a Class I, II, III, VI, or VII license that has not been surrendered by an agency after it ceases to provide continuous service. An agency may retain its license if it can resume continuous service within 72 hours after ceasing continuous service and if the Executive Director of the Board determines, in writing, that (1) circumstances beyond the agency's control exist which justify the agency's temporary cessation of continuous service and (2) public health, safety, and welfare will be better served by allowing the agency to resume continuous service within 72 hours after ceasing continuous service. This amendment also provides the Board a mechanism to issue a temporary hardship license to counties or counties that could otherwise be left without any Class I emergency ambulance service. If a Class I agency is the only emergency ambulance service for a geographic service area and the agency's license is surrendered or temporarily suspended, the Board office shall issue a temporary Class I hardship license to the county or counties listed as the geographic service area on the surrendered or suspended license. A temporary hardship license is not transferrable, but the county may contract with a licensed Class I agency to provide service to the geographic service area under a temporary hardship license. A county issued a temporary hardship license must begin providing continuous service no later than 120 days after the license is issued. During those 120 days, the county may request that any licensed Class I agency respond to a call for service in the geographic service area. A temporary hardship license will expire one (1) year after it is issued, after a new Class I license for the geographic service area is issued, or, if the Class I license for the geographic service area was temporarily suspended, after that license is reinstated, whichever occurs first. Finally, this amendment requires Class I agencies to schedule a minimum of one (1) staffed ambulance to be staged in the agency's geographic service area and allows healthcare facilities to request that any licensed agency conduct a non-emergency transport if an agency licensed for a specific geographic service area is unable to respond to the non-emergency call within two (2) hours from the initial time the call is received.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary (1) to provide the Board a mechanism to temporarily suspend Class I, II, III, VI, and VII licenses if an agency fails to surrender its license after ceasing continuous service; (2) to provide the Board a mechanism to issue temporary Class I hardship licenses to counties that could otherwise be left without any Class I emergency ambulance service; and (3) to ensure timely responses to non-emergency calls. Additionally, this amendment is necessary to ensure Class I agencies schedule a minimum of one (1) staffed ambulance to be staged in the agency's geographic service area.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 311A.020 and 311A.030 by establishing licensure requirements and minimum response times for ambulance providers and medical first response agencies.

(d) How the amendment will assist in the effective administration of the statutes: KRS 311A.020 requires the Board of Emergency Medical Services to exercise all administrative functions in the regulation of the EMS system and the licensing of ambulance services and medical first response agencies, except those regulated by the Board of Medical Licensure or the Cabinet for Health and Family Services. KRS 311A.030 requires the Board to promulgate administrative regulations for the licensing, inspection, and regulation of ambulance providers and medical first response agencies. This amendment will assist in the effective

administration of those statutes by establishing licensure requirements and minimum response times for ambulance providers and medical first response agencies.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The public, all ambulance services, medical first response agencies, counties, and many healthcare facilities will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Chief Operations or Service Director of a Class I, II, III, VI, or VII agency must contact the Executive Director of the Board upon determining that his or her agency will cease providing continuous service, and must provide the approximate date and time that the agency will cease continuous service. The Chief Operations or Service director must also contact the Executive Director upon determining that his or her agency has ceased providing continuous service, and must provide the date and time that the agency ceased continuous service. Class I, II, III, VI, and VII agencies will be required to surrender their licenses within 24 hours after ceasing continuous service unless the agency can demonstrate to the Executive Director that (1) circumstances beyond the agency's control exist which justify the agency's temporary cessation of continuous service and (2) public health, safety, and welfare will be better served by allowing the agency to resume continuous service within 72 hours after ceasing continuous service. If the Executive Director makes the above-listed determinations, the agency must resume continuous service no later than 72 hours after ceasing continuous service.

Counties issued a temporary Class I hardship license will be required to begin providing continuous service no later than 120 days after the license is issued.

Class I agencies will be required to schedule a minimum of one (1) staffed ambulance to be staged in the agency's geographic service area.

Ambulance services and medical first response agencies will be required to meet the minimum response times established by 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): Counties issued a temporary Class I hardship license under this amendment may incur costs by providing Class I ambulance services or contracting with a Class I ambulance service.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Counties and the public will benefit from counties being able to provide Class I ambulance services under a temporary Class I hardship license after the Class I agency serving the county or counties has surrendered its license or its license has been temporarily suspended. The public will benefit from having a Class I ambulance staged in the agency's geographic service area. Healthcare facilities will benefit from being able to request that any licensed agency respond to non-emergency calls if an agency licensed for the geographic service area cannot respond within two (2) hours after the call is initially received.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There will be no additional cost to the administrative body to implement this administrative regulation.

(a) Initially: There will be no additional cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the administrative body to implement this administrative regulation.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The Board's general appropriations will be used to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or

funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be 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.

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation because this amendment applies to all ambulance services and medical first response agencies.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The administrative regulation will affect counties, ambulance services, and medical first response agencies.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311A.020 requires the Board of Emergency Medical Services to exercise all administrative functions in the regulation of the EMS system and the licensing of ambulance services and medical first response agencies, except those regulated by the Board of Medical Licensure or the Cabinet for Health and Family Services. KRS 311A.030 requires the Board to promulgate administrative regulations for the licensing, inspection, and regulation of ambulance providers and medical first response agencies.

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? Administration of this administrative regulation will not require any additional costs.

(d) How much will it cost to administer this program for subsequent years? Administration of this administrative regulation will not require any additional costs.

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

Revenues (+/-): This administrative regulation will not generate revenue.

Expenditures (+/-): This administrative regulation will not require any additional expenditures.

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation will not generate any cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation will not generate any cost savings.

(c) How much will it cost the regulated entities for the first year? This administrative regulation will not impose any costs.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation will not impose any costs.

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

Cost Savings (+/-): This administrative regulation will not

generate any cost savings.

Expenditures (+/-): This administrative regulation will not impose any costs.

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. This administrative regulation will not have a major economic impact.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 1:122. Importation, possession, and prohibited aquatic species.

RELATES TO: KRS 150.180

STATUTORY AUTHORITY: KRS 150.025(1)(c), 150.280(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS

150.025(1)(c) authorizes the department to promulgate administrative regulations regarding the buying, selling, or transporting of fish and wildlife. KRS 150.280(2) authorizes the department to promulgate administrative regulations prohibiting the holding or transporting of species potentially damaging to native ecosystems. This administrative regulation establishes the species of aquatic life that are prohibited in the Commonwealth.

Section 1. A person shall not buy, sell, possess, import, or release any aquatic species not native or established in Kentucky waters, except as established in Section[Sections] 2, 4, or 5 of this administrative regulation.

Section 2. Exceptions.

(1) A person may buy, sell, import, or possess aquarium species, except those established in Section 3 of this administrative regulation, but shall not release the species into Kentucky waters.

(2) A person may buy, sell, import, or possess sterile, triploid grass carp (*Ctenopharyngodon idella*) pursuant to 301 KAR 1:171.

(3) A fertile, diploid grass carp may only be imported or possessed by a certified propagator for the exclusive purpose of producing triploid grass carp.

(4) Individuals of any aquatic species may be immediately released at the time of catch back into the water body from which they are caught.

(5) Tilapia (*Tilapia* spp. or *Oreochromis* spp.) may only be transported and sold live within Kentucky to:

(a) Another licensed propagator;

(b) A licensed live fish and bait dealer; or

(c) A person, corporation, or other business entity that is selling fish for food in establishments licensed for resale by another state agency or for sale as wholesale food products.

(6) A person may buy, sell, import, or possess goldfish (*Carassius auratus*) for use as bait.

Section 3. The live aquatic organisms established in subsections (1) through (7) of this section shall not be imported, bought, sold, or possessed in aquaria:

(1) Subfamily Serrasalminae - piranha, piraya, pirae, or tiger characins;

(2) *Astyanax mexicanus* - Mexican banded tetra, Mexican minnow, or Mexican tetra;

(3) *Petromyzon marinus* - sea lamprey;

(4) Genus *Clarias* - walking catfish;

(5) Genus *Channa* - snakeheads of Asia and Africa;

(6) *Dreissena polymorpha* - zebra mussel; or

(7) *Neogobius melanostomus* - round goby.

Section 4. Invasive[Asian] carp.

(1) A person shall not buy, sell, possess, import, transport, or release the live *invasive[Asian]* carp species established in paragraphs (a) through (d) of this subsection, except as established in Section 2(2), (3), and (4) of this administrative regulation:

(a) *Hypophthalmichthys molitrix* - silver carp;

(b) *Hypophthalmichthys nobilis* - bighead carp;

(c) *Mylopharyngodon piceus* - black carp; or

(d) *Ctenopharyngodon idella* - grass carp[—except as established in Section 2(2) and (3) of this administrative regulation].

(2) A licensed commercial fisherman or any person possessing a sport fishing license may possess, sell, and transport the species of *invasive[Asian]* carp established in Section 4(1) of this administrative regulation if the *invasive[Asian]* carp are:

(a) Not being transported in water;

(b) Dead or dying[Moribund]; and

(c) Being transported to a fish processing facility.

Section 5. Commissioner Approval. The commissioner may permit the importation of a banned aquatic species if the applicant demonstrates that the species shall be used for legitimate scientific or educational purposes.

RICH STORM, Commissioner

APPROVED BY AGENCY: June 15, 2023

FILED WITH LRC: June 15, 2023 at 10:40 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 31, 2023, at 9:00 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 August 31, 2023. 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, (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 the species of aquatic life which are prohibited in the Commonwealth.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to protect Kentucky's fish populations from the damaging effects of invasive fish species.

(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 regarding the buying, selling, or transporting of fish and wildlife. KRS 150.280(2) authorizes the department to promulgate administrative regulations prohibiting the holding or transporting of species potentially damaging to native ecosystems.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will carry out the purposes of the statutes by restricting possession, transportation, sale, and release of species potentially damaging to native ecosystems.

(2) If 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 individuals of any aquatic species, to be immediately released back into the water body from which they are caught, restrict transportation and sale of live tilapia species for food consumption only, add "possess" to the prohibited actions pertaining to live invasive carp species, allow sport fishing anglers to possess, transport, and sell invasive carp if they are not in water, are dead or dying (replaces the word "moribund"), and are being transported to a fish processing facility. Finally, this amendment clarifies that goldfish may be used as bait.

(b) The necessity of the amendment to this administrative regulation: The amendment clarifies that anglers can immediately release invasive carp which they catch back into the water body they were caught. Previously, the regulation stated all "release" was illegal. Live tilapia are a viable food product, but they should not be stocked in Kentucky's waters. This amendment clarifies that live tilapia can only be transported and sold based on specific guidelines related to food sales. This amendment also cleans up language to specify that live invasive carp cannot be "possessed", along with the other prohibited activities already in the regulation. Along with this, the amendment does allow for invasive carp to be possessed by licensed anglers if the fish are out of water, are dead or dying (replaces the word "moribund"), and going to a fish processing facility. Finally, this amendment clarifies that goldfish can be used as bait when fishing.

(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: This amendment will affect anglers wishing to sell invasive carp or use goldfish as bait. In addition, anglers that catch an invasive species such as invasive carp, will not be required to keep it and can release it immediately back into the water. Both commercial and recreational anglers will be prohibited from possessing live invasive carp. Finally, those who wish to propagate, buy, sell, and transport live tilapia, will be impacted.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities dealing with invasive carp and other invasive aquatic species, tilapia, or goldfish must follow the new regulations.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These amendments will benefit anglers by keeping damaging aquatic invasive species out of Kentucky's waters.

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

(a) Initially: There will be no initial cost to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals must abide by the same requirements.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources' Divisions of Fisheries 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)(c) authorizes the department to promulgate administrative regulations regarding the buying, selling, or transporting of fish and wildlife. KRS 150.280(2) authorizes the department to promulgate administrative regulations prohibiting the holding or transporting of species potentially damaging to native ecosystems.

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

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

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

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

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 anticipated cost savings for the 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 anticipated cost savings for the 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 the regulated entities in the first year.

(d) How much will it cost the regulated entities for subsequent years? There will be no additional 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 amendment will have no major economic impact as defined above.

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)**

301 KAR 1:201. Taking of fish by traditional fishing methods.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.340, 150.620, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.470

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate ~~[creel]~~limits and methods of take, and to make these requirements apply to a limited area. KRS 150.470(1) authorizes the department to promulgate administrative regulations for limits~~[creel]~~ and size limits for fish. This administrative regulation establishes fish size limits, daily ~~[creel]~~limits, and possession limits for fishing.

Section 1. [Definitions.

(1) ~~"Artificial bait" means a lure, bare hook, or fly made of wood, metal, plastic, feathers, preserved pork rind, or a similar inert material.~~

(2) ~~"Catfish" means a blue catfish, channel catfish, or flathead catfish.~~

(3) ~~"Chumming" means placing substances in the water for the purpose of attracting fish to a particular area.~~

(4) ~~"Culling" means releasing a previously caught fish that an angler has kept as a part of a daily creel limit and replacing it with another fish of the same species.~~

(5) ~~"Daily creel limit" means the maximum number of a particular species or group of species a person may legally take in one (1) calendar day while fishing.~~

(6) ~~"Lake" means impounded waters from the dam upstream to the first riffle on the main stem river and tributary streams.~~

(7) ~~"Possession limit" means the maximum number of unprocessed fish a person may hold after two (2) or more days of fishing.~~

(8) ~~"Processed fish" means a fish that has been gutted, with the head removed.~~

(9) ~~"Release" means to return a fish to the water from which it was taken immediately after removing the hook.~~

(10) ~~"Shad" means a live gizzard shad or threadfin shad.~~

(11) ~~"Single hook" means a hook with no more than one (1) point.~~

(12) ~~"Size limit" means the minimum legal length of a fish that is measured by laying the fish flat on a ruler with the mouth closed and tail lobes squeezed together.~~

(13) ~~"Slot limit" means a size range of a fish species that shall be released by an angler.~~

(14) ~~"Traditional fishing methods" means the act of taking or attempting to take for noncommercial purposes any freshwater fish species using:~~

(a) ~~Hook and line in hand; or~~

(b) ~~Rod in hand.~~

(15) ~~"Trophy catfish" means a:~~

(a) ~~Blue or flathead catfish that is a minimum of thirty-five (35) inches in length; or~~

(b) ~~Channel catfish that is a minimum of twenty-eight (28) inches in length.~~

(16) ~~"Unprocessed fish" means the whole fish prior to being processed.~~

Section 2.] Statewide Limits and Requirements.

(1) A person taking fish from public or private waters using traditional fishing methods shall observe the daily ~~[creel]~~limits and size limits established in paragraphs (a) through (l) of this subsection, except as established in Sections 2[3] through 2[8] of this administrative regulation or pursuant to 301 KAR 1:180:

(a) Black bass daily ~~[creel]~~limit, six (6).

1. Largemouth bass and smallmouth bass size limit, twelve

(12) inches.

2. Kentucky bass and Coosa bass, no size limit;

(b) Rock bass daily ~~[creel]~~limit, fifteen (15); no size limit;

(c) Sauger, walleye, and any hybrid thereof daily ~~[creel]~~limit, singly or in combination, six (6); size limit, fourteen (14) inches;

(d) Muskellunge daily ~~[creel]~~limit, one (1); size limit, thirty (30) inches;

(e) Chain pickerel daily ~~[creel]~~limit, five (5); no size limit;

(f) White bass and hybrid striped bass daily ~~[creel]~~limit, singly or in combination, fifteen (15); size limit, no more than five (5) fish in a daily ~~[creel]~~limit or ten (10) fish in a possession limit shall be fifteen (15) inches or longer;

(g) Striped bass daily ~~[creel]~~limit, five (5); size limit, fifteen (15) inches;

(h) Crappie daily ~~[creel]~~limit, twenty (20); no size limit;

(i) Trout.

1. No culling statewide.

2. Rainbow trout daily ~~[creel]~~limit, eight (8); no size limit.

3. Brown trout daily ~~[creel]~~limit, one (1); size limit, sixteen (16) inches.

4. Brook trout, catch and release only.

5. Cutthroat trout daily ~~[creel]~~limit, one (1); size limit, twenty (20) inches;

(j) Redear sunfish daily ~~[creel]~~limit, twenty (20); no size limit;

(k) Paddlefish daily ~~[creel]~~limit, two (2); no size limit; and

(l) Catfish daily ~~[creel]~~limit is unlimited; no size limit, except that only one (1) trophy catfish of each species may be harvested daily.

(2) The possession limit shall be two (2) times the daily ~~[creel]~~limit, except as established in Section 2[3] of this administrative regulation.

(3) A person shall release grass carp caught from a lake owned or managed by the department.

(4) A person shall release any:

(a) Lake sturgeon; or

(b) Alligator gar.

(5) A person shall release fish:

(a) Below the minimum size limits established by this administrative regulation;

(b) Within a protected slot limit established by this administrative regulation; or

(c) Of a particular species if a person already possesses the daily ~~[creel]~~limit for that species.

(6) A person shall not possess more than one (1) daily ~~[creel]~~limit of processed or unprocessed fish while:

(a) Fishing;

(b) On the shoreline; or

(c) On the water.

(7) A fishing tournament organizer or representative, excluding a tournament angler, may possess more than the daily ~~[creel]~~limit of tournament caught fish:

(a) At the weigh-in site;

(b) At the release site; or

(c) While transporting live fish from a remote weigh-in site back to the water body of origin for release.

(8) A fishing tournament organizer or representative, excluding a tournament angler, may possess more than the daily ~~[creel]~~limit of unprocessed tournament caught fish that expired at the sites established in subsection (7) of this section for subsequent disposal by one (1) of the methods established in paragraphs (a) through (c) of this subsection:

(a) Bagged, sealed, and placed in a garbage dump;

(b) Donated to a charity for the purpose of human consumption; or

(c) Transferred to a conservation officer or another agent of the department.

(9) A person shall not remove the head or tail of any fish for which a size limit or daily ~~[creel]~~limit exists while:

(a) Fishing;

(b) On the shoreline; or

(c) On the water.

(10) A person may possess sport fish below the size limit or beyond the possession limit if the person:

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(a) Obtains the fish from a licensed fish propagator or other legal source; and

(b) Retains a receipt or other written proof that the fish were legally acquired.

(11) A person shall release all caught trout unless the person:

(a) Has a valid trout permit;

(b) Is exempted from trout permit requirements pursuant to KRS 150.170(2); or

(c) Is fishing in a licensed pay lake stocked with trout by the lake operator.

(12) A person fishing in an artificial bait-only area shall not attach any of the items established in paragraphs (a) through (h) of this subsection to the artificial bait:

(a) An insect;

(b) Minnow;

(c) Fish egg;

(d) A worm;

(e) Corn;

(f) Cheese;

(g) Cut bait; or

(h) A similar organic bait substance including dough bait and putty or paste-type bait designed to attract fish by taste or smell.

(13) The fishing season shall be open year-round.

Section 2. ~~[Section 3.]~~ Exceptions. All other provisions of this administrative regulation shall apply to the bodies of water listed in this section, with the exceptions established in subsections (1) through (75) of this section.

(1) Bad Branch, Letcher County. A person shall only fish with artificial bait with a single hook;

(2) Barkley Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Crappie size limit, ten (10) inches;

(3) Barren River and tributaries upstream from confluence with the Green River ~~[Lock and Dam 4]~~, including Barren River Lake. Smallmouth bass size limit, fifteen (15) inches;

(4) Barren River Lake.

(a) Crappie size limit, ten (10) inches.

(b) Largemouth and smallmouth bass size limit, fifteen (15) inches.

(c) Blue and channel catfish aggregate daily ~~[creel]~~ limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches.

(d) Barren River Lake shall extend up:

1. Barren River to the Highway 100 bridge;

2. Long Creek to the Highway 100 bridge;

3. Beaver Creek to the Highway 1297 bridge;

4. Skaggs Creek to the Mathews Mill Road bridge; and

5. Peter Creek to the Peter Creek Road bridge;

(5) Beaver Lake, Anderson County.

(a) A person shall not possess shad or use shad as bait.

(b) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;

(6) Beech Fork Reservoir, Powell County.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) Bluegill daily ~~[creel]~~ limit, fifteen (15);

(7) Bert Combs Lake, Clay County.

(a) A person shall not possess shad or use shad as bait.

(b) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;

(8) Beulah Lake, Jackson County. Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;

(9) Boltz Lake, Grant County.

(a) A person shall not possess shad or use shad as bait.

(b) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;

(10) Briggs Lake, Logan County. A person shall not possess shad or use shad as bait;

(11) Buckhorn Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Muskellunge size limit, forty (40) inches.

(c) Crappie size limit, nine (9) inches;

(12) Carnico Lake, Nicholas County.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) Sunfish daily ~~[creel]~~ limit, fifteen (15);

(13) Carr Creek Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Crappie size limit, nine (9) inches.

(c) Blue and channel catfish aggregate daily ~~[creel]~~ limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches;

(14) Carter Caves State Park Lake, Carter County.

(a) Fishing shall be during daylight hours only.

(b) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches.

(c) A person shall not possess shad or use shad as bait;

(15) Cave Run Lake.

(a) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches.

(b) Smallmouth bass size limit, eighteen (18) inches.

(c) Muskellunge size limit, forty (40) inches.

(d) Cave Run Lake shall extend up:

1. Scott's Creek to the Highway 801 culvert;

2. Beaver Creek to the Highway 1274 culvert;

3. North Fork Creek to the confluence of Craney Creek;

4. Licking River to the Highway 772 bridge; and

5. Ramey Creek to include the pool of water north of Highway 801;

(16) Cedar Creek Lake, Lincoln County. Largemouth bass size limit, twenty (20) inches; daily ~~[creel]~~ limit, one (1);

(17) Chimney Top Creek, Wolfe County. A person shall only fish with artificial bait;

(18) Clear Fork, tributary of the Gasper River. A person shall release all sportfish;

(19) Corinth Lake, Grant County.

(a) A person shall not possess shad or use shad as bait.

(b) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;

(20) Cumberland Lake.

(a)

1. Largemouth bass size limit, fifteen (15) inches.

2. Smallmouth bass size limit, eighteen (18) inches.

3. Striped bass size limit, twenty-two (22) inches; daily ~~[creel]~~ limit, two (2).

4. Crappie size limit, ten (10) inches.

(b) Cumberland Lake shall extend up:

1. The Cumberland River to Cumberland Falls;

2. The Big South Fork to Devil's Jump;

3. The Rockcastle River to The Narrows; and

4. The Laurel River to Laurel River Dam;

(21) Cumberland River upstream from Cumberland Falls and all tributaries. Smallmouth bass size limit, fifteen (15) inches;

(22) Cumberland River from Wolf Creek Dam downstream to the Kentucky-Tennessee state line and tributaries, except Hatchery Creek in Russell County as established in subsections ~~(39)~~ ~~(36)~~ and ~~(40)~~ ~~(37)~~ of this section.

(a) Brown trout size limit, twenty (20) inches; daily ~~[creel]~~ limit, one (1).

(b) Brook trout size limit, fifteen (15) inches; daily ~~[creel]~~ limit, one (1).

(c) Rainbow trout. There shall be a slot limit between fifteen (15) and twenty (20) inches; daily ~~[creel]~~ limit, five (5), which shall not include more than one (1) fish greater than twenty (20) inches.

(d) A trout permit shall be required in order to fish the Cumberland River below Wolf Creek Dam to the Tennessee state line including the Hatchery Creek and all other tributaries upstream to the first riffle.

(e) Chumming shall not be permitted in the Cumberland River below Wolf Creek Dam to the Tennessee state line, including the Hatchery Creek and all other tributaries upstream to the first riffle;

(23) Cumberland River below Barkley Lake. Fishing is prohibited at the mouth of the lock chamber, as designated by signs.

- (24) Dale Hollow Lake.
- (a) Smallmouth bass. There shall be a slot limit between sixteen (16) and twenty-one (21) inches. The daily [creel]-limits shall not include more than one (1) fish less than sixteen (16) inches long and one (1) fish greater than twenty-one (21) inches long.
- (b) Walleye and walleye hybrids, daily [creel]-limit, five (5); size limit, sixteen (16) inches.
- (c) Sauger daily [creel]-limit, ten (10); size limit, fourteen (14) inches.
- (d) Rainbow trout and brown trout, no size limit; daily [creel]-limit, seven (7), singly or in combination.
- (e) Largemouth bass size limit, fifteen (15) inches.
- (f) Black bass aggregate daily [creel]-limit, five (5), no more than two (2) of which shall be smallmouth bass.
- (g) Crappie size limit, ten (10) inches; daily [creel]-limit, fifteen (15);
- (25) Dewey Lake.
- (a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.
- (b) Blue and channel catfish aggregate daily[creel] limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches.
- (c) Muskellunge size limit, forty (40) inches;
- (26) Dix River for two (2) miles downstream from Herrington Lake Dam. A person shall only fish with artificial bait;
- (27) Doe Run Lake, Kenton County.
- (a) Largemouth bass size limit, fifteen (15) inches.
- (b) Channel catfish daily [creel]-limit, four (4).
- (c) A person shall not possess shad or use shad as bait;
- (28) Dog Fork, Wolfe County. A person shall only fish with an artificial bait with a single hook;
- (29) Elkhorn Creek, downstream from the confluence of the North and South forks to the first shoal located 3,400 feet above its confluence with the Kentucky River, as posted with signs. Largemouth bass and smallmouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;
- (30) Elmer Davis Lake, Owen County.
- (a) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches.
- (b) A person shall not possess shad or use shad as bait;
- (31) Fishtrap Lake.
- (a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.
- (b) Crappie size limit, nine (9) inches.
- (c) Blue and channel catfish aggregate daily limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches;
- (32) Floyd's Fork Creek, from Highway 60 downstream to Bardstown Road in Jefferson County. Largemouth and smallmouth bass size limit, fifteen (15) inches;
- (33) Golden Pond at the Visitors' Center at Land Between the Lakes. Channel catfish daily [creel]-limit, five (5); size limit, fifteen (15) inches;
- (34) General Butler State Park Lake, Carroll County.
- (a) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches.
- (b) Channel catfish daily [creel]-limit, four (4).
- (c) A person shall not possess shad or use shad as bait;
- (35) Grayson Lake. Largemouth bass and smallmouth bass size limit, fifteen (15) inches;
- (36) Greenbo Lake, Greenup County.
- (a) A person shall not possess shad or use shad as bait.
- (b) Bluegill and sunfish daily [creel]-limit, fifteen (15) fish;
- (37) Green River from Green River Lake Dam and extending downstream to the end of the concrete wall. Fishing shall be limited to rod in hand using either:
- (a) An artificial bait with a single hook; or
- (b) Live bait attached to a single hook;
- (38) Green River Lake.
- (a) Crappie size limit, nine (9) inches.
- (b) Muskellunge size limit, forty (40) inches.
- (c) Green River Lake shall extend up:
1. Green River to the Snake Creek Boat Ramp;
2. Robinson Creek to the Highway 76 Bridge; and
3. Casey Creek to the Arnolds Landing Boat Ramp.
- (39) Hatchery Creek, upper section as established by signs, Russell County. Rainbow trout, brown trout, and brook trout, no size limit; daily [creel]-limit, five (5), singly or in combination;
- (40) Hatchery Creek, lower section as established by signs, Russell County. A person fishing for trout shall:
- (a) Only use artificial bait; and
- (b) Release all trout;
- (41) Highsplint Lake, Harlan County. Largemouth bass size limit, twenty (20) inches; daily [creel] limit, one (1);
- (42) Jericho Lake, Henry County.
- (a) Largemouth bass size limit, fifteen (15) inches.
- (b) A person shall not possess shad or use shad as bait;
- (43) Kentucky Lake and the canal connecting Kentucky and Barkley lakes.
- (a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.
- (b) Crappie size limit, ten (10) inches;
- (44) Kentucky River upstream of Lock and Dam 14, the North Fork and tributaries including Carr Fork below Carr Creek Lake, along with the Middle and South Forks and all tributaries. Smallmouth bass size limit, fifteen (15) inches;
- (45) Kentucky River WMA, Boone Tract, excluding Benjy Kinman Lake.
- (a) Sunfish daily [creel]-limit, fifteen (15).
- (b) Catfish daily [creel]-limit, four (4);
- (46) Lake Blythe, Christian County. Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;
- (47) Lake Chumley, and the department-owned property surrounding the lake, Boyle and Lincoln counties. Closed to public access from one-half (1/2) hour after sunset through one-half (1/2) hour before sunrise;
- (48) Lake Malone, Muhlenberg and Logan counties. Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;
- (49) Lake Mingo, Jessamine County. A person shall not possess shad or use shad as bait;
- (50) Lake Reba, Madison County. A person shall not possess shad or use shad as bait;
- (51) Lake Shelby, Shelby County.
- (a) Largemouth bass size limit, fifteen (15) inches.
- (b) Channel catfish daily [creel]-limit, four (4).
- (c) A person shall not possess shad or use shad as bait;
- (52) Laurel River Lake.
- (a) Largemouth bass size limit, fifteen (15) inches.
- (b) Smallmouth bass size limit, eighteen (18) inches; daily [creel]-limit, two (2).
- (c) Crappie size limit, nine (9) inches; daily [creel]-limit, fifteen (15);
- (53) Lincoln Homestead Lake, Washington County.
- (a) A person shall not fish except during daylight hours.
- (b) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches.
- (c) Channel catfish daily [creel]-limit, four (4).
- (d) A person shall not possess shad or use shad as bait;
- (54) Marion County Lake. A person shall not possess shad or use shad as bait;
- (55) McNeely Lake, Jefferson County.
- (a) A person shall not possess shad or use shad as bait.
- (b) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;
- (56) Mill Creek Lake, Powell County.
- (a) Largemouth bass size limit, fifteen (15) inches.
- (b) A person shall not possess shad or use shad as bait;
- (57) New Haven Optimist Lake, Nelson County.
- (a) Largemouth bass size limit, fifteen (15) inches.
- (b) Channel catfish daily [creel]-limit, four (4).
- (c) A person shall not possess shad or use shad as bait;
- (58) Nolin River Lake shall extend up Bacon Creek to Highway 178 and to Wheelers Mill Road Bridge on the Nolin River.
- (a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Crappie size limit, nine (9) inches;

(59) Ohio River.

(a) White bass, striped bass, and any hybrid thereof, daily [creel] limit, thirty (30); no more than four (4) in the daily [creel] limit shall be fifteen (15) inches or greater.

(b) The blue catfish daily [creel] limit shall be unlimited, except that no more than one (1) fish in the daily [creel] limit shall be thirty-five (35) inches or longer.

(c) The channel catfish daily [creel] limit shall be unlimited, except that no more than one (1) fish in the daily [creel] limit shall be twenty-eight (28) inches or longer.

(d) The flathead catfish daily [creel] limit shall be unlimited, except that no more than one (1) fish in the daily [creel] limit shall be thirty-five (35) inches or longer;

(60) Otter Creek, Meade County. Smallmouth and largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;

(61) Panbowl Lake, Breathitt County. Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;

(62) Parched Corn Creek, Wolfe County. A person shall only fish with an artificial bait with a single hook;

(63) Pennyrite Lake, Christian County. Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;

(64) Pikeville City Lake, Pike County. A person shall release largemouth bass;

(65) Rockcastle River WMA, all ponds collectively, Pulaski County.

(a) Largemouth bass size limit, fifteen (15) inches; daily [creel] limit, one (1).

(b) Bluegill and sunfish daily [creel] limit, ten (10).

(c) Catfish daily [creel] limit, four (4).

(d) Crappie daily [creel] limit, fifteen (15);

(66) Rough River Lake.

(a) Crappie size limit, nine (9) inches.

(b) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(c) Rough River Lake shall extend up Rough River to the Highway 84 Bridge;

(67) Shanty Hollow Lake, Warren County. A person shall not possess shad or use shad as bait;

(68) Shillalah Creek, Bell County, outside the Cumberland Gap National Park. A person shall only fish with an artificial bait with a single hook;

(69) Spurlington Lake, Taylor County. A person shall not possess shad or use shad as bait;

(70) Sympson Lake, Nelson County. Largemouth bass size limit, fifteen (15) inches;

(71) Taylorsville Lake, including the impounded waters of the lake to Dry Dock Road Bridge on the Salt River.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Blue and channel catfish aggregate daily limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches. [Blue and channel catfish:

1. Aggregate daily creel limit of fifteen (15); and

2. ~~Only one (1) fish of either species in the aggregate daily creel limit shall be longer than twenty-five (25) inches.~~

(c) Crappie size limit, ten (10) inches; daily [creel] limit, fifteen (15);

(72) Trammel Creek, Allen County. Rainbow trout daily limit, five (5);

(73) Willisburg Park Pond, Washington County.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) Catfish daily [creel] limit, four (4).

(c) Sunfish daily [creel] limit, fifteen (15);

(74) Wood Creek Lake. Largemouth and smallmouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches; and

(75) Yatesville Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Blue and channel catfish aggregate daily limit of fifteen

(15), only one (1) of which shall be longer than twenty-five (25) inches.

Section 3. [Section 4.] Daily Limits [Creel] and Size Limits for Waters Containing Rockcastle Strain Walleye.

(1) Rockcastle Strain Walleye Waters.

(a) Barren River and tributaries upstream from confluence with the Green River [Lock and Dam 1], including Barren River Lake;

(b) Cumberland River and tributaries above Cumberland Falls;

(c) Kentucky River and tributaries upstream from Lock and Dam 14;

(d) Middle Fork Kentucky River and tributaries;

(e) North Fork Kentucky River and tributaries, including Carr Fork below Carr Creek Lake;

(f) South Fork Kentucky River and tributaries;

(g) Levisa Fork River and tributaries upstream from Fishtrap Lake, including Fishtrap Lake;

(h) Martins Fork Lake; and

(i) Wood Creek Lake.

(2) There shall be a slot limit between eighteen (18) and twenty-six (26) inches and a daily [creel] limit of two (2) for walleye in the waters established in subsection (1) of this section.

Section 4. [Section 5.] Seasonal Catch and Release for Trout.

(1) There shall be a catch and release trout season from October 1 through March 31 for the bodies of water established in subsection (3) of this section.

(2) A person shall:

(a) Only use artificial bait; and

(b) Release all trout.

(3) The streams established in paragraphs (a) through (o) of this subsection shall be open for the catch and release trout season:

(a) Bark Camp Creek in Whitley County;

(b) Beaver Creek from Highway 90 Bridge upstream to Highway 200 Bridge in Wayne County;

(c) Big Bone Creek within Big Bone Lick State Park in Boone County;

(d) Cane Creek in Laurel County;

(e) Casey Creek in Trigg County;

(f) Clear Creek from mouth upstream to 190 Bridge in Bell County;

(g) East Fork of Indian Creek in Menifee County;

(h) Elk Spring Creek in Wayne County;

(i) Floyd's Fork Creek in Jefferson County from Highway 60 downstream to Bardstown Road;

(j) Gunpowder Creek in Boone County;

(k) Left Fork of Beaver Creek in Floyd County from Highway 122 Bridge upstream to the headwater;

(l) Otter Creek in Meade County on the Fort Knox Reservation and Otter Creek Park;

(m) Rock Creek from the Bell Farm Bridge to the Tennessee state line in McCreary County;

(n) Trammel Creek in Allen County; and

(o) Swift Camp Creek in Wolfe County.

Section 5. [Section 6.] Special Limits for Fishing Events.

(1) The commissioner may establish special limits for fishing events including:

(a) Size limits for selected species;

(b) Daily [creel] limits for selected species;

(c) Eligible participants; and

(d) Dates and times of special limits.

(2) An event sponsor shall post signs informing anglers of any special limits for a minimum of twenty-four (24) hours before the event.

Section 6. [Section 7.] Daily Limits [Creel] and Size Limits for Special Lakes and Ponds. The requirements established in subsections (1) through (5) of this section shall apply to all bodies of water established in the Special Lakes and Ponds list:

(1) Largemouth bass size limit, fifteen (15) inches; daily [creel] limit, one (1);

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- (2) Catfish daily ~~creel~~ limit, four (4);
- (3) Sunfish or bream daily ~~creel~~ limit, fifteen (15);
- (4) Rainbow trout daily ~~creel~~ limit, five (5); and
- (5) A person shall not possess shad or use shad as bait.

Section 7.~~[Section 8.]~~ Special Catfish Size Limit Lakes. All lakes established in the Special Catfish Size Limit Lakes list shall have a twelve (12) inch size limit on catfish.

Section 8.~~[Section 9.]~~ Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "Special Catfish Size Limit Lakes", 2021 edition; and
 - (b) "Special Lakes and Ponds", 2021 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.

RICH STORM, Commissioner

APPROVED BY AGENCY: June 15, 2023

FILED WITH LRC: June 15, 2023 at 10:40 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 31, 2023, 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 August 31, 2023. 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 size limits, daily creel limits, and possession limits for sport fish that may be taken from Kentucky waters.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary to properly manage the sport fish populations of 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 seasons for the taking of fish and wildlife, to regulate daily limits and methods of take, and to make these requirements apply to a limited area. KRS 150.470 authorizes the department to establish daily limits and size limits for fish.
 - (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 limiting the number and size of fish that may be taken from Kentucky's waters. This will ensure that Kentucky's valuable sport fish populations are maintained at high levels.

(2) If 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 places a special size and daily limit regulation on channel and blue catfish at Yatesville Lake, changes the lower boundary for special walleye and smallmouth bass size and daily limits on the Barren River and tributaries due to the removal of Lock and Dam #1 on the Barren River, removes the

definitions section due to creation of a new definitions regulation (301 KAR 1:001), and changes "daily creel limit" to "daily limit" throughout the regulation to match the new definitions regulation (301 KAR 1:001).

(b) The necessity of the amendment to this administrative regulation: The Department is now stocking blue catfish in Yatesville Lake and is imposing stricter regulations to protect this new population. In addition, a new lower boundary for special smallmouth bass and walleye regulations on the Barren River is needed due to the removal of the old lower boundary marker which was Lock and Dam #1 on the Barren River. Finally, the definitions section of this regulation is being removed due to creation of a new definitions regulation (301 KAR 1:001) and the use of "daily creel limit" is being changed to "daily limit" to match the newly created 301 KAR 1:001.

(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 anglers fishing at Yatesville Lake and the Barren River and its tributaries will be affected. The "daily limit" wording change is not a regulation change and should have no impact on anglers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All anglers fishing at the water bodies and for the species identified in 2(a) above will have to follow the new regulations.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anglers who fish at the water bodies and for the species identified in 2(a) above will benefit in the long run from a higher quality sport fishery as well as an easy to identify lower boundary on the Barren River.

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

(a) Initially: There will be no initial cost to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals fishing in Kentucky must abide by the same requirements.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources' Divisions of Fisheries 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) authorizes the Department to promulgate administrative regulations to regulate bag, daily, and possession limits of game and fish. KRS 150.470 authorizes the department to promulgate daily limits and size limits for fish.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 unknown if this administrative regulation could indirectly increase any fishing license sales 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? There will be no direct revenue generated in subsequent years, and it is unknown if fishing license sales will be indirectly increased because of this amendment.

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

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

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 anticipated cost savings for the 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 anticipated cost savings for the 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 the regulated entities in the first year.

(d) How much will it cost the regulated entities for subsequent years? There will be no additional 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 amendment will have no major economic impact as defined above.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 1:410. Taking of fish by nontraditional fishing methods.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.235, 150.445, 150.620, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.440, 150.470, 235.280

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 those requirements apply to a limited area. KRS 150.440 requires the department to promulgate administrative regulations for establishing open seasons and ~~[creel]~~limits for rough fish by gigging, grabbing, snaring, and snagging. KRS 150.470(1) requires the department to promulgate administrative regulations for ~~bag or daily~~~~[creel]~~ limits for fish. KRS 235.280 requires the department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of the state. This administrative regulation establishes the procedures for taking sport and rough fish by nontraditional fishing methods.

Section 1. ~~[Definitions.~~

(1) ~~"Angler" means a person holding a valid resident or nonresident fishing license and includes those persons who are fishing license exempt as established in KRS 150.170.~~

(2) ~~"Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.~~

(3) ~~"Asian carp" means bighead carp, silver carp, black carp, and grass carp.~~

(4) ~~"Bow fishing" means shooting rough fish with an arrow with a barbed or retractable style point that has a line attached to it for retrieval with archery equipment, a crossbow, or a pneumatic arrow launching device.~~

(5) ~~"Catfish" means a blue catfish, channel catfish, or flathead catfish.~~

(6) ~~"Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without the aid from an archer.~~

(7) ~~"Cull" means to release a previously caught fish that an angler has kept as a part of a daily creel limit and replace it with another fish of the same species.~~

(8) ~~"Pneumatic arrow launching device" means a device designed to fire an arrow through the use of a compressed air cartridge.~~

(9) ~~"Possession limit" means the maximum number of unprocessed fish a person may hold after two (2) or more days of fishing.~~

(10) ~~"Temporary aquatic area" means an area temporarily inundated from, but still connected to, a stream, river, or reservoir and that persists only for the duration of the elevated water levels.~~

(11) ~~"Temporary pool" means an area temporarily inundated from, but not connected to, a stream, river, or reservoir.~~

(12) ~~"Trophy catfish" means a:~~

(a) ~~Blue or flathead catfish that is a minimum of thirty-five (35) inches in length; or~~

(b) ~~Channel catfish that is a minimum of twenty-eight (28) inches in length.~~

Section 2. ~~[General Provisions.~~

(1) A person using nontraditional fishing methods shall observe the daily ~~[creel]~~limits and size limits established in paragraphs (a) through (d) of this subsection:

(a) The daily ~~[creel]~~limit for catfish using any non-traditional fishing method shall not include more than one (1) trophy catfish of each species, except as established in Section 6[7](3) of this administrative regulation.

(b) The paddlefish daily ~~[creel]~~limit shall be two (2) with no size limit.

(c) The shovelnose sturgeon daily ~~[creel]~~limit shall be two (2) with no size limit.

(d) The ~~invasive~~~~[Asian]~~ carp daily ~~[creel]~~limit shall be unlimited with no size limit.

(2) The possession limit for paddlefish and trophy catfish shall be two (2) times the daily ~~[creel]~~limit for each species.

(3) Shovelnose sturgeon shall not be harvested from the Mississippi River and shall be immediately released.

- (4) A person shall release any:
 - (a) Lake sturgeon;
 - (b) Pallid sturgeon; or
 - (c) Alligator gar.

Section 2.~~[Section—3.]~~ Skin Diving, Scuba Diving, and Underwater Spear Fishing.

(1) Skin diving or scuba diving shall be prohibited in all lakes owned by the department, except as established in subsections (2), (3), and (4) of this section.

(2) Skin diving and scuba diving shall be allowed in salvage operations if the diver receives prior written permission from:

- (a) The department's Division of Law Enforcement; or
- (b) The local conservation officer who is assigned to the particular department-owned lake.

(3) Skin diving or scuba diving shall be permitted anytime without prior authorization in cases of emergency involving the possibility of saving human life or in the recovery of a drowning victim.

(4) Skin diving and scuba diving shall be allowed in Greenbo Lake:

- (a) In a designated cove marked with signage and buoys;
- (b) From April 1 through October 31; and
- (c) From 10:00 a.m. to 6:00 p.m. daily.

(5) A person who is skin diving or scuba diving in a designated cove as established in subsection (4) of this section shall display an international diving flag as established in 301 KAR 6:030.

(6) Recreational boating and angling shall be prohibited in the designated cove marked with signage and buoys during the times open to skin diving and scuba diving as established in subsection (4) of this section if an international diving flag is present in the cove.

(7) Underwater spearing of fish with a hand-held spear or mechanically propelled spear shall be legal throughout the year in lakes 1,000 surface acres in size or larger, as measured at the normal summer pool level as established in paragraphs (a) and (b) of this subsection.

- (a) An angler who is spearing fish shall:

- 1. Be completely submerged in the water where spearing takes place; and
- 2. Only spear rough fish.
- (b) The daily limit shall be fifteen (15) rough fish, no more than five (5) of which shall be catfish.

Section 3.~~[Section—4.]~~ Sport Fishing Trotlines, Jugging, and Setlines.

(1) Each sport fishing trotline, jug line, or setline shall be permanently labeled or tagged with the customer identification number found on the current sport fishing license of the person using it.

(2) Each trotline, jug line, or setline shall be checked by the owner at least once every twenty-four (24) hours, at which time the owner shall:

- (a) Bait all hooks; and
- (b) Remove all caught fish.
- (3) A trotline, setline, or jug line shall be confiscated if it is not:
 - (a) Properly labeled or tagged; or
 - (b) Checked or baited at least once every twenty-four (24) hours.

- (4) An angler shall not use more than:

- (a) Two (2) sport fishing trotlines;
- (b) Twenty-five (25) setlines; or
- (c) Fifty (50) jug lines.
- (5) Multiple anglers in one (1) boat shall not use more than fifty (50) jug lines per boat.

- (6) An angler using a sport fishing trotline shall:

- (a) Set the trotline at least three (3) feet below the water's surface;
- (b) Not have more than fifty (50) single or multi-barbed hooks; and
- (c) Have all hooks at least eighteen (18) inches apart on the trotline.

(7) A person shall not use a jug line or setline with more than one (1) single or multi-barbed hook.

(8) A sport fishing trotline, jug line, or setline shall not be used in the waters established in paragraphs (a) through (d) of this subsection:

(a) In the Tennessee River within 700 yards of Kentucky Lake Dam;

(b) In the Cumberland River below Lake Barkley Dam to the Highway 62 bridge;

(c) In any lake less than 500 surface acres owned or managed by the department, except:

- 1. Ballard Wildlife Management Area lakes, Ballard County;
- 2. Peal Wildlife Management Area lakes, Ballard County; and
- 3. Swan Lake Wildlife Management Area lakes, Ballard County; or

(d) In the areas of the Ohio River established in subparagraphs 1. through 8. of this paragraph:

1. Smithland Dam downstream to a line perpendicular to the end of the outer lock wall;

2. J. T. Meyers Dam downstream to a line perpendicular to the end of the outer lock wall and that portion of the split channel around the southern part of Wabash Island from the fixed weir dam to the first dike;

3. Newburgh Dam downstream to a line perpendicular to the end of the outer lock wall;

4. Cannelton Dam downstream to a line perpendicular to the end of the outer lock wall;

5. McAlpine Dam downstream to the K & I railroad bridge;

6. Markland Dam downstream to a line perpendicular to the end of the outer lock wall;

7. Meldahl Dam downstream to a line perpendicular to the end of the outer lock wall; or

8. Greenup Dam downstream to a line perpendicular to the end of the outer lock wall.

(9) An angler using a trotline, jug line, or setline shall follow all sport fish daily [reel-]limits and size limits as established in 301 KAR 1:201.

Section 4.~~[Section—5.]~~ Temporary Aquatic Areas and Temporary Pools.

(1) The department, with consent of the landowner, may delineate temporary aquatic areas and temporary pools where anglers may take rough fish by any method except:

- (a) Poison;
- (b) Electrical devices;
- (c) Firearms; or
- (d) Explosives.

(2) The department shall be authorized to establish the exact dates and times when rough fish may be taken in temporary aquatic areas and temporary pools.

(3) A person with a valid commercial fishing license may use nets and seines if the nets and seines are appropriately tagged, as established in 301 KAR 1:146.

(4) A person shall first obtain the permission of the landowner before taking rough fish from a temporary pool.

Section 5.~~[Section—6.]~~ Gigging and Snagging.

(1) Gigging and snagging season shall be February 1 through May 10, except as established in subsections (7) and (9) of this section.

(2) A person shall not:

- (a) Gig or snag a sport fish, as established in 301 KAR 1:060, except as established in subsections (7) and (9) of this section;
- (b) Gig or snag from a platform;
- (c) Gig from a boat in any lake less than 500 surface acres;
- (d) Gig at night from a boat; or
- (e) Snag from a boat.

(3) A snagging rod shall be equipped with:

- (a) Line;
- (b) Guides;
- (c) A reel; and
- (d) One (1) single hook or treble hook attached to the line, except that five (5) hooks, either single or treble, may be used while snagging in:
 - 1. The Green River and its tributaries; or

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2. The Rolling Fork River and its tributaries.

(4) A person who accidentally gigs or snags a sport fish shall immediately return the fish to the water, except as established in subsections (7) and (9) of this section.

(5) A person shall not gig or snag in the areas or bodies of water established in paragraphs (a) through (g) of this subsection:

(a) The Cumberland River below Wolf Creek Dam downstream to the Tennessee line, including Hatchery Creek;

(b) Any tributary of the Cumberland River below Wolf Creek Dam to the Tennessee line from the junction of the tributary with the Cumberland River to one-half (1/2) mile upstream;

(c) The Cumberland River below the Lake Barkley Dam to the U.S. 62 bridge;

(d) The Middle Fork of the Kentucky River, from Buckhorn Lake Dam downstream to the Breathitt County line in Perry County;

(e) The Rough River, below Rough River Lake Dam downstream to the State Highway 54 bridge in Breckinridge and Grayson ~~counties~~[Counties];

(f) Cave Run Lake; or

(g) Within 200 yards of any dam on a river or stream, except as established in subsection (7) of this section.

(6) A person shall not gig in the Tennessee River below Kentucky Lake Dam.

(7) A person may snag sport fish or rough fish in the Tennessee River below the Kentucky Lake Dam to the U.S. 62 bridge:

(a) For twenty-four (24) hours a day from January 1 through May 31; and

(b) From sunset to sunrise from June 1 through December 31.

(8) A person shall not snag in that section of the Tennessee River from the U.S. 62 bridge to the Interstate 24 bridge.

(9) A person may snag sport fish or rough fish year-round in the section of the Tennessee River from the Interstate 24 bridge to the Ohio River.

(10) A person shall not snag on the Tennessee River:

(a) Under the U.S. 62 bridge;

(b) Under the P & L Railroad bridge; or

(c) From any fishing pier or jetty.

(11) There shall not be a daily ~~[creel]~~limit for rough fish except the daily aggregate ~~[creel]~~limit for snagging of rough and sport fish in the Tennessee River below Kentucky Lake Dam shall be eight (8), except there shall not be a daily~~[creel]~~ limit on invasive~~[Asian]~~ carp~~[Carp]~~.

(12) There shall not be a size limit for sport fish snagged in the Tennessee River below Kentucky Lake Dam.

(13) A person shall immediately retain, and not release or cull, any gigged or snagged paddlefish.

(14) All snagged fish in the Tennessee River below Kentucky Lake Dam shall be immediately retained, and not released or culled, except for invasive~~[Asian]~~ carp, shad, or herring.

(15) All gigged or snagged rough fish in the Cumberland River below Lake Barkley Dam shall be immediately retained, and not released or culled, except for invasive~~[Asian]~~ carp, shad, or herring.

(16) A person shall immediately cease snagging if:

(a) A daily ~~[creel]~~limit of paddlefish is reached;

(b) A daily ~~[creel]~~limit of shovelnose sturgeon is reached;

(c) A daily ~~[creel]~~limit of sport fish has been caught in the Tennessee River below Kentucky Lake Dam, even if the daily~~[creel]~~ limit for that sport fish is less than eight (8); or

(d) A trophy catfish is snagged.

Section 6.~~[Section 7.]~~ Grabbing.

(1) The grabbing season for rough fish shall be June 1 to August 31 during daylight hours.

(2) Grabbing shall be permitted in all waters.

(3) The daily ~~[creel]~~limit for grabbing shall be fifteen (15) fish, no more than five (5) of which may be catfish, except anglers grabbing at Barren River Lake, Carr Creek Lake, Dewey Lake, Fishtrap Lake, ~~[or]~~Taylorville Lake, or Yatesville Lake may only harvest one (1) blue or channel catfish over twenty-five (25) inches.

Section 7.~~[Section 8.]~~ Bow Fishing.

(1) An angler using archery equipment, a crossbow, or a pneumatic arrow launching device shall not take:

(a) Sport fish;

(b) Alligator gar;

(c) More than five (5) catfish daily; or

(d) Lake sturgeon.

(2) Any paddlefish, shovelnose sturgeon, or catfish shot with archery equipment, a crossbow, or a pneumatic arrow launching device shall:

(a) Be immediately retained, and not released or culled; and

(b) Count toward a person's daily limit.

(3) Bow fishing shall be open statewide, except:

(a) In the Cumberland River below Wolf Creek Dam downstream to the Tennessee line including Hatchery Creek;

(b) In any tributary of the Cumberland River below Wolf Creek Dam to the Tennessee line, from the junction of the tributary with the Cumberland River to one-half (1/2) mile upstream;

(c) In:

1. Carpenter Lake (Davies County);

2. Clear Creek Lake (Bath County);

3. Greenbo Lake (Greenup County);

4. Lake Carnico (Nicholas County); and

5. Lake Reba (Madison County); or

(d) From a boat in restricted areas below navigation, power generating, or flood control dams.

RICH STORM, Commissioner

APPROVED BY AGENCY: June 15, 2023

FILED WITH LRC: June 15, 2023 at 10:40 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 31, 2023, at 11:00 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 August 31, 2023. 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, (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 the procedures for taking sport and rough fish by nontraditional fishing methods.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage the fish populations of Kentucky and to provide for reasonable recreational fishing opportunities.

(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, daily limits, and methods of take, and to make those requirements apply to a limited area. KRS 150.440 requires the department to promulgate administrative regulations for establishing open seasons and daily limits for rough fish by gigging, grabbing, snaring, and snagging. KRS 150.470 requires the department to promulgate administrative regulations for bag or daily limits for fish. KRS 235.280 requires the department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of the state.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statutes by authorizing the methods used to take fish, the areas open for such take, and the seasons and limits to be used when taking fish by nontraditional methods.

(2) If 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 Yatesville Lake to the list of lakes where anglers can only keep one blue catfish or channel catfish over 25 inches per day when hand grabbing. This amendment also removes the definitions section due to creation of a new definitions regulation (301 KAR 1:001), and changes "daily creel limit" to "daily limit" throughout the regulation to match the new definitions regulation (301 KAR 1:001). Finally, the word "Asian" has been replaced with "invasive" when referring to the invasive carp species.

(b) The necessity of the amendment to this administrative regulation: The Department is now stocking blue catfish in Yatesville Lake and is imposing stricter hand-grabbing regulations to protect this new population. In addition, the definitions section of this regulation is being removed due to creation of a new definitions regulation (301 KAR 1:001) and the use of "daily creel limit" is being changed to "daily limit" and "Asian" is being changed to "invasive" to match the definitions in the newly created 301 KAR 1:001.

(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 anglers hand-grabbing catfish at Yatesville Lake will be affected. The "daily limit" and "invasive carp" wording changes are not regulation changes and should have no impact on anglers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All anglers hand-grabbing catfish at Yatesville Lake will need to follow the new regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anglers who hand-grab catfish at Yatesville Lake will benefit in the long run from a higher quality catfish fishery.

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

(a) Initially: There will be no initial cost to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals fishing in Kentucky must abide by the same requirements.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government

(including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources' Divisions of Fisheries 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) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, daily limits, and methods of take, and to make those requirements apply to a limited area. KRS 150.440 requires the department to promulgate administrative regulations for establishing open seasons and daily limits for rough fish by gigging, grabbing, snaring, and snagging. KRS 150.470 requires the department to promulgate administrative regulations for bag or daily limits for fish. KRS 235.280 requires the department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of the state.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 unknown if this administrative regulation could indirectly increase any fishing license sales 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? There will be no direct revenue generated in subsequent years, and it is unknown if fishing license sales will be indirectly increased because of this amendment.

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

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

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 anticipated cost savings for the 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 anticipated cost savings for the 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 the regulated entities in the first year.

(d) How much will it cost the regulated entities for subsequent years? There will be no additional 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 amendment will have no major economic impact as defined above.

GENERAL GOVERNMENT
Department of Agriculture
Office of the Consumer and Environmental Protection
(Amendment)

302 KAR 16:010. Business registration and permit[Business Identification Number] for amusement rides or attractions.

RELATES TO: KRS 247.234

STATUTORY AUTHORITY: KRS 247.234

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.234(2) and (3)(a) require the Commissioner of the Department of Agriculture to promulgate administrative regulations for the process for registering a business and applying for an amusement ride or attraction permit.[of application for a business identification number.] This administrative regulation establishes the criteria for registering a business and obtaining a permit[business identification number] to operate an amusement ride or attraction.

Section 1. Definition. "Permit["Business identification number"] means a number identifying [the individual or business entity owner of an amusement ride or amusement attraction and] the specific ride or attraction to which it is assigned.

Section 2. A permit[unique business identification number] shall be required to operate each applicable amusement ride or amusement attraction in this state, and shall be valid for one (1) year from the date of issuance, in accordance with KRS 247.234(3)(a)(2). A permit[business identification number] shall not be transferred or assigned.

Section 3. Procedure for Registering a Business. Every owner of an amusement ride or attraction seeking to operate in Kentucky shall submit:

- (1) A Business Registration Application; and
- (2) A Business Registration Fee of fifty (50) dollars.

Section 4.[Section—3.] Procedure for Obtaining a Permit[business identification number].

(1) Every owner of an amusement ride or [amusement] attraction seeking to operate in Kentucky shall submit [a business identification number]:

- (a) A Permit application for rides and attractions;[along with]
- (b) A permit fee of five (5) dollars for each ride or device; and
- (c) The fee for each required initial safety inspection required by 302 KAR 16:020.

(2)(a) The owner of the amusement ride or amusement attraction shall provide a written itinerary indicating:

1. The location of the first setup;
2. All future operating dates and locations, including addresses;
3. The operating period at each location;
4. The names of all rides requiring initial safety inspections pursuant to KRS 247.234(3)(b); and
5. All rides or attractions being operated at each location.

(b) The itinerary shall be delivered to the department at least fourteen (14) days prior to the first scheduled setup and shall be updated in writing immediately if cancellations are made or additional locations added.

(c) The itinerary shall be submitted in writing including by facsimile or electronic mail.

(3) Except as established in subsection (4) of this section, the applicant shall provide proof of liability insurance in the amount of at least \$1,000,000[\$500,000] per occurrence for bodily injury or death, for each amusement ride or amusement attraction.

(a) The proof of insurance shall include a statement that the insurer shall not cancel the policy without at least thirty (30) days written notice to the commissioner.

(b) Proof of insurance shall be either the policy or a certified statement issued by the insurer and shall include:

1. A listing of all amusement rides and amusement attractions insured; or

2. A statement that all amusement rides and amusement attractions operated under the supervision of the insured are covered in the policy.

(4) If the applicant's amusement rides or amusement attractions are permanently located or erected, the applicant may, instead of providing proof of liability insurance, provide proof of financial responsibility in at least the amount of \$1,000,000[\$500,000] on or before the date of the initial safety inspection. Proof of financial responsibility shall be shown by:

(a) Proof of liability insurance of at least \$1,000,000[\$500,000] per occurrence for bodily injury or death;

(b) A financial statement, certified by a licensed certified public accountant, dated no more than thirty (30) days prior to the application date, indicating a net worth of at least \$1,000,000[\$500,000] or more in assets located in the state; or

(c) An irrevocable letter of credit to the department in the amount of at least \$1,000,000[\$500,000].

Section 5.[Section—4.] Upon receipt of a complete application, applicable fees, proof of liability insurance or financial responsibility, and a complete itinerary, a permit[business identification number] shall be issued to[in the name of] the applicant.

[(1)] If all items required by this section are not physically available to the inspector when the initial safety inspection takes place, the inspector shall not perform the initial safety inspection and a permit[business identification number] shall not be issued.

[(2)] The business identification number certificate shall be available for inspection at all times.

(3) If the business identification number holder is operating in multiple locations, a clear and legible copy of the business identification number shall be displayed.

Section 6.[Section—5.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Business Registration Form", 6/23;

(b) "Amusement Ride and Attraction Permit[Business Identification Number] Application[for Rides and Attractions]", 6/23[08/08];

(c)[(b)] "Itinerary Mobile Operators", 03/03; and

(d)[(c)] "Itinerary Permanent Fixed Locations", 03/03.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RYAN QUARLES, Commissioner of Agriculture

APPROVED BY AGENCY: June 14, 2023

FILED WITH LRC: June 15, 2023 at 11:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2023 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation creates the process for business registration and permit application.

(b) The necessity of this administrative regulation: This regulation creates rules for application to the KDA to become a permit holder.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutes charge the KDA with creating rules for application for a permit, and this filing satisfies that charge.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This filing makes clear for all entities the application process to the KDA.

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

(a) How the amendment will change this existing administrative regulation: This filing updates references and creates an application and permit fee. It increases the insurance requirement.

(b) The necessity of the amendment to this administrative regulation: This filing updates references do to statute changes.

(c) How the amendment conforms to the content of the authorizing statutes: This filing updates references do to statute changes.

(d) How the amendment will assist in the effective administration of the statutes: This filing will make the regulation clearer and easier to understand.

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

The KDA has 532 active companies and 4232 active devices currently regulated.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities seeking a permit will need to follow the steps in the filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An application and permit fee are now required. Permit holders will need to carry the proper amount of insurance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The permit holder will be able to lawfully operate.

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

(a) Initially: The KDA estimates \$530,000 total annually.

(b) On a continuing basis: The KDA estimates at least \$530,000 total annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of fees and the KDA general fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Fees are established to help offset program costs.

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

(9) TIERING: Is tiering applied? No, all entities are treated the same.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative

regulation. KRS 247.232-.236

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 KDA expects to receive \$110,000 annually at current participation levels.

(b) How 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 KDA expects to receive \$110,000 annually at current participation levels.

(c) How much will it cost to administer this program for the first year? The cost to administer this regulation is approximately \$530,000.

(d) How much will it cost to administer this program for subsequent years? The cost to administer for subsequent years is estimated to be at least \$530,000.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(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 for this filing.

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

No cost savings are anticipated for this filing. (c) How much will it cost the regulated entities for the first year? No changes in costs are anticipated, other than the application and permit fees.

(d) How much will it cost the regulated entities for subsequent years? No changes in costs are anticipated, other than the application and permit fees.

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)] Fees will not exceed the major economic impact threshold.

GENERAL GOVERNMENT

Department of Agriculture

Office of the Consumer and Environmental Protection
(Amendment)

302 KAR 16:020. Inspection and operation of amusement rides or amusement attractions.

RELATES TO: KRS 247.232, 247.234(3), 247.236(3)

STATUTORY AUTHORITY: KRS 247.234, 247.236

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.234(3)(b) and (d) require the department to promulgate administrative regulations establishing initial safety inspection fees and safety requirements for amusement rides or attractions. KRS 247.236(3) requires the department to promulgate an administrative regulation establishing the requirements for the construction of safety barriers around an amusement ride or attraction. This administrative regulation establishes safety

guidelines for the operation and inspection of amusement rides or attractions and establishes the initial safety inspection fees.

Section 1. Definitions.

(1) "Air inflatable device" means an object that is filled with air that is supplied continuously by an electric motor-driven blower.

(2) "Dark ride" means an amusement ride or amusement attraction enclosed and with the lights turned off during the duration of the ride, and is a nonmechanized self-propelled amusement.

(3) "Go-cart facility" means an amusement ride or amusement attraction that carries a rider on a fixed path and includes the vehicle that travels the fixed path.

(4) "Inspection fee" means a fee required to be paid to operate any amusement ride or amusement attraction in Kentucky.

(5) "Kiddie ride" means an amusement ride or amusement attraction that has a height requirement of forty-two (42) inches or less to ride.

(6) "Major ride" means any ride that:

(a) Has height requirement of forty-three (43) inches or greater to ride; and

(b) Does not have a specific fee established for it in Section 2 of this administrative regulation.

(7) "Play port" means an object designed for use by children on which a child can swing, walk, climb, or slide, and that follows a fixed path.

(8) "Steel roller coaster" means roller coaster of which the track portion is constructed of steel or other metal material.

(9) "Walk through" means a fun house or glass house that is nonmechanized and self-propelled.

(10) "Water ride" means an amusement ride or amusement attraction that uses water as a means of propulsion and includes bumper boats and water park slides that are in excess of fifteen (15) feet at the highest point of the slide.

(11) "Wooden roller coaster" means a roller coaster of which the track portion is constructed of wood material.

Section 2.

(1) All amusement rides~~[ride]~~ and amusement attractions operating in Kentucky shall bear an initial safety inspection seal. Following and passing an initial safety inspection, an initial safety inspection seal shall be affixed to a permanent and accessible section of the amusement ride or amusement attraction.

(2) If the required initial safety inspection seal does not appear on the amusement ride or amusement attraction, operation of the amusement ride or amusement attraction shall be stopped until proof of an initial inspection is provided.

Section 3. Initial safety inspection fees, and any required re-inspection fees, shall be levied for each amusement ride and amusement attraction. The initial safety inspection fees shall be assessed as established in subsections (1) through (12) of this section.

(1) Air inflatable devices shall be fifty (50) dollars.

(2) Kiddie rides shall be seventy-five (75) dollars.

(3) Play port shall be seventy-five (75) dollars.

(4) Water rides shall be seventy-five (75) dollars.

(5) Dark rides shall be seventy-five (75) dollars.

(6) Walk throughs and glass houses shall be seventy-five (75) dollars.

(7) Tracked trains shall be \$100.

(8) Go-cart facility shall be \$125.

(9) Major rides shall be \$150.

(10) Steel roller coaster shall be \$200.

(11) Wooden roller coaster shall be \$300.

(12) Any amusement ride or amusement attraction not listed in this section shall be \$150.

(13) Re-inspection as established in KRS 247.234(4)(a).

(a) Re-inspection fees shall be assessed as established in paragraph (b)1. through 12. of this subsection.

(b)

1. Air inflatable devices shall be \$100.

2. Kiddie rides shall be \$150.

3. Play port shall be \$150.

4. Water rides shall be \$150.

5. Dark rides shall be \$150.

6. Walk throughs and glass houses shall be \$150.

7. Tracked trains shall be \$200.

8. Go-cart facility shall be \$250.

9. Major rides shall be \$300.

10. Steel roller coaster shall be \$400.

11. Wooden roller coaster shall be \$500.

12. Any amusement ride or amusement attraction not listed in this paragraph shall be \$300.

Section 4. All new permanent amusement rides and amusement attractions shall have all required state and local permits before the initial safety inspection.

RYAN QUARLES, Commissioner of Agriculture

APPROVED BY AGENCY: June 14, 2023

FILED WITH LRC: June 14, 2023 at 3:55 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2023 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation creates rules for inspections and inspection fees for permit holders.

(b) The necessity of this administrative regulation: This regulation creates rules for inspections and inspection fees for permit holders. (c) How this administrative regulation conforms to the content of the authorizing statutes: The statutes charge the KDA with creating rules for inspections and the fees for inspections. This filing satisfies that charge.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This filing makes clear for all entities what inspection fees and rules will be.

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

(a) How the amendment will change this existing administrative regulation: This filing updates an inflatable definition.

(b) The necessity of the amendment to this administrative regulation: This filing updates an inflatable definition to clarify a needed definition.

(c) How the amendment conforms to the content of the authorizing statutes: This filing amends the current filing to clarify a needed definition.

(d) How the amendment will assist in the effective administration of the statutes: This filing will make the regulation clearer and easier to understand.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The KDA has 532 active companies and 4232 active devices currently regulated.

(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 permit holder will need to follow all statutes and regulations. This filing creates inspection fees.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No changes in costs are expected with this filing. The fees remain the same.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The permit holder will be able to lawfully operate.

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

(a) Initially: The KDA estimates \$530,000 total annually.

(b) On a continuing basis: The KDA estimates at least \$530,000 total annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of fees and the KDA general fund.

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

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

(9) TIERING: Is tiering applied? No, all entities are treated the same.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 247.232-.236

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 KDA expects to receive \$110,000 annually at current participation levels.

(b) How 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 KDA expects to receive \$110,000 annually at current participation levels.

(c) How much will it cost to administer this program for the first year? The cost to administer this regulation is approximately \$530,000.

(d) How much will it cost to administer this program for subsequent years? The cost to administer for subsequent years is estimated to be at least \$530,000.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(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 for this filing.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No cost savings are anticipated for this filing.

(c) How much will it cost the regulated entities for the first year? No changes in costs are anticipated.

(d) How much will it cost the regulated entities for subsequent years? No changes in costs are anticipated.

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)] Fees will not exceed the major economic impact threshold.

GENERAL GOVERNMENT

Department of Agriculture

Office of the Consumer and Environmental Protection (Amendment)

302 KAR 16:030. Determination of administrative or safety violations which cannot be corrected immediately; section stop order.

RELATES TO: KRS 247.232, 247.234, 247.236

STATUTORY AUTHORITY: KRS 247.234, 247.236

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.234 authorizes the Commissioner of the Department of Agriculture to provide for inspections for amusement rides or attractions. This administrative regulation establishes procedures to determine violations which cannot be immediately corrected.

Section 1. Definition. "Immediately correctable violation" means a violation which can be corrected on the day of an[the initial] inspection.

Section 2. The department's inspector shall determine the nature and severity of violations and shall determine if the violations are not immediately correctable based on the manufacturer's standards, KRS 247.232 through 247.236, and 302 KAR 16:010 through 302 KAR 16:140.

Section 3. A violation issued for operation of an amusement ride or amusement attraction without a valid permit may[business identification number shall] be considered a violation which is not immediately correctable.

Section 4. A safety inspector may order closed a unit or section[portion] of a ride which fails to comply with safety or operational guidelines, if closure of that section of the ride does not affect the remaining units or sections[portion] of the ride, by placing upon that unit or section[portion] of the ride a section stop order. The owner shall notify the department when the unit or section[portion] of the ride has been repaired to provide the department with[obtain] information in support of a[for] section stop order removal.

RYAN QUARLES, Commissioner of Agriculture

APPROVED BY AGENCY: June 14, 2023

FILED WITH LRC: June 14, 2023 at 3:55 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2023 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public

hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation identifies instances when a device may continue to operate and when it may not.

(b) The necessity of this administrative regulation: This filing makes clear the circumstances that a device may continue to be used and what the procedure is when it cannot.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutes charge the KDA with determination of circumstances requiring a stop operation order.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This filing makes clear for all entities when a ride or device may operate.

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

(a) How the amendment will change this existing administrative regulation: This filing updates references from business identification number to a permit, and makes other changes to clarify terms and frequency references.

(b) The necessity of the amendment to this administrative regulation: This filing is needed to clarify the regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This filing amends the current filing to conform to recent statutory changes.

(d) How the amendment will assist in the effective administration of the statutes: This filing will make the regulation clearer and easier to understand.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The KDA has 532 active companies and 4232 active devices currently regulated.

(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 permit holder will need to follow the clarified steps to resume operation of a device.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No changes in costs are expected with this filing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The permit holder will be able to lawfully operate.

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

(a) Initially: The KDA estimates \$530,000 total annually.

(b) On a continuing basis: The KDA estimates at least \$530,000 total annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of fees and the KDA general fund.

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

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

(9) TIERING: Is tiering applied? No, all entities are treated the same.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 247.232-.236

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 KDA expects to receive \$110,000 annually at current participation levels.

(b) How 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 KDA expects to receive \$110,000 annually at current participation levels.

(c) How much will it cost to administer this program for the first year? The cost to administer this regulation is approximately \$530,000.

(d) How much will it cost to administer this program for subsequent years? The cost to administer for subsequent years is estimated to be at least \$530,000.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(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 for this filing.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No cost savings are anticipated for this filing.

(c) How much will it cost the regulated entities for the first year? No changes in costs are anticipated.

(d) How much will it cost the regulated entities for subsequent years? No changes in costs are anticipated.

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)] Fees will not exceed the major economic impact threshold.

GENERAL GOVERNMENT
Department of Agriculture
Office of the Consumer and Environmental Protection
(Amendment)

302 KAR 16:111. Violations, civil penalties, revocations, and suspensions of ~~permits~~[business identification number] for amusement rides or attractions.

RELATES TO: KRS 247.233

STATUTORY AUTHORITY: KRS 247.233

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.233 requires the department to promulgate administrative regulations establishing a comprehensive list of violations and civil penalties not to exceed \$10,000 and the procedure for suspension and revocation of a ~~permit~~[business identification number]. This administrative regulation establishes requirements for violations, civil penalties, revocations, and suspensions of ~~permits~~[business identification number] for amusement rides or attractions.

Section 1.

(1) The following violations of KRS 247.232 through 247.236 and 302 KAR Chapter 16 shall result in the assessment of civil penalty of not less than \$1,000 and not more than \$10,000:

- (a) Operating without a current ~~permit~~[business identification number];
- (b) Operating without current insurance in the required coverage amount;
- (c) Operating a ride or attraction while it is under a stop operation order;
- (d) Operating a ride or attraction while the operator is not present;
- (e) Using blocking in foot switch breaker;
- (f) Using improper material for electrical fuse;
- (g) Moving equipment after a reportable incident or tampering with evidence;
- (h) Operating a ride or attraction at an unsafe distance too close to high voltage;
- (i) Positioning a ride or attraction underneath utility lines;
- (j) Operating a ride or attraction while the operator is impaired;
- (k) Grounding the generator incorrectly;
- (l) Failing to maintain the ride or attraction in good mechanical condition;
- (m) Failing to repair ride or attraction according to manufacturer specifications or recommendations;
- (n) Failing to properly shield power units; and
- (o) Failing to use appropriate replacement parts.

(2) The following violations of KRS 247.232 through 247.236 and 302 KAR Chapter 16 shall result in the assessment of a civil penalty of not less than \$100 and not more than \$5,000:

- (a) Failing to follow manufacturer safety guidelines and manufacturer specifications;
- (b) Failing to notify the department of an incident requiring a report within twelve (12) hours;
- (c) Failing to submit a required incident report;
- (d) Admitting an intoxicated patron on an amusement ride or attraction;
- (e) Admitting a patron with inappropriate footwear; and
- (f) Failing to completely fill out incident report form.

(3) The following violations of KRS 247.232 through 247.236 and 302 KAR Chapter 16 shall be result in the assessment of a civil penalty of not less than \$100 and not more than \$1,000:

- (a) Failing to have operational manuals on site;
- (b) Failing to have maintenance manuals on site;
- (c) Failing to have maintenance records on site;
- (d) Fueling ride or attraction in an undesignated area;
- (e) Exceeding manufacturer's speed of ride or attraction;
- (f) Failing to properly secure the ride or attraction;
- (g) Failing to have electrical disconnect within six (6) feet of operator;
- (h) Operating a ride or attraction by an[a] operator under sixteen (16) years of age;
- (i) Failing to use correct START/STOP switch;

- (j) Operating the ride or attraction in inclement weather;
- (k) Failing to comply with proper operating procedures noted during inspection;
- (l) Failing to properly anchor inflatable device;
- (m) Failing to perform or document pre-operation inspections;
- (n) Operating without an itinerary; and
- (o) Operating without the required number of operators as required by manufacturer.

(4) The following acts shall be violations of KRS 247.232 through 247.236 and 302 KAR Chapter 16. Violators of these requirements shall be assessed a civil penalty of not less than \$100 and not more than \$500:

- (a) Failing to have Ground Fault Circuit Interrupter (GFCI) protection if required;
 - (b) Failing to properly place fencing barrier;
 - (c) Failing to have fire extinguishers in correct locations;
 - (d) Failing to have first aid kit on location; and
 - (e) Failing to have inspection sticker in appropriate location.
- (5) Failure to have required ride or attraction signage or use of incorrect signage shall be a violation of KRS 247.232 through 247.236 and 302 KAR Chapter 16. Violators of these requirements shall be assessed a civil penalty of not less than \$100 and not more than \$200.

Section 2.

(1) Persons who commit the same violation within thirty (30) days of being cited for the first violation shall be assessed up to double the civil penalty assessed in Section 1 of this administrative regulation, not to exceed \$10,000.

(2) Persons who commit a third same violation within sixty (60) days of being cited for the first violation shall be assessed up to triple the civil penalty assessed in Section 1 of this administrative regulation, not to exceed \$10,000.

(3) This section shall not prohibit the commissioner from suspending or revoking a license, permit, registration, or certification at any time pursuant to KRS 247.233.

Section 3. ~~Permit~~[Business identification number] Suspension or Revocation.

(1) The business owner shall have ten (10) days upon the receipt of the notification of a proposed suspension, revocation, or modification of a ~~permit~~[business identification number] to request a hearing. The hearing shall be conducted in accordance with KRS Chapter 13B.

(2) If a hearing is not requested, the department may suspend, revoke, or modify the ~~permit~~[business identification number] once the ten (10) day hearing request filing period has passed.

(3)

(a) The department may suspend a ~~permit~~[business identification number] and may place stop operation orders on all rides or attractions belonging to the owner for a period of time that shall not exceed seven (7) days, pending inquiry.

(b) After opportunity for a hearing, the department may deny, suspend, revoke, or modify the provision of any ~~permit~~[business identification number] issued under KRS 247.234 if the department finds that the owner or his employee has committed any of the following acts, each of which is declared to be a violation of KRS 247.232 through 247.236:

- 1. Making a false or fraudulent statement to inspectors;
- 2. Knowingly violating any provision of KRS 247.232 through 247.236 or 302 KAR Chapter 16; or
- 3. Failing to pay an administrative penalty or fee assessed by this chapter.

(4) Any owner whose ~~permit~~[business identification number] is revoked under the provisions of this section shall not be eligible to apply for a new ~~permit~~[license] until the time has elapsed from the date of the order revoking the ~~permit~~[business identification number] as established by the department, not to exceed two (2) years, or if an appeal is taken from the order or revocation, not to exceed two (2) years from the date of the order or final judgment sustaining the revocation.

RYAN QUARLES, Commissioner of Agriculture

VOLUME 50, NUMBER 1– JULY 1, 2023

APPROVED BY AGENCY: June 14, 2023

FILED WITH LRC: June 14, 2023 at 3:55 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2023 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation creates provisions for violations and penalties for permit holders.

(b) The necessity of this administrative regulation: This filing makes clear the ranges of violations and penalties for permit holders.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutes charge the KDA with determination of penalties, and this filing satisfies this charge.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This filing makes clear for all entities what violations and penalties are in a given circumstance.

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

(a) How the amendment will change this existing administrative regulation: This filing updates references from business identification number to a permit.

(b) The necessity of the amendment to this administrative regulation: This filing is needed to conform to recent verbiage changes.

(c) How the amendment conforms to the content of the authorizing statutes: This filing amends the current filing to conform to recent statutory changes.

(d) How the amendment will assist in the effective administration of the statutes: This filing will make the regulation clearer and easier to understand.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The KDA has 532 active companies and 4,232 active devices currently regulated.

(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 permit holder will need to follow all statutes and regulations. This filing creates the penalties and violation provisions when regulations are not followed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No changes in costs are expected with this filing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The permit holder will be able to lawfully operate.

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

(a) Initially: The KDA estimates \$530,000 total annually.

(b) On a continuing basis: The KDA estimates at least \$530,000 total annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of fees and the KDA general fund.

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

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

(9) TIERING: Is tiering applied? No, all entities are treated the same.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 247.232-.236

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 KDA expects to receive \$110,000 annually at current participation levels.

(b) How 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 KDA expects to receive \$110,000 annually at current participation levels.

(c) How much will it cost to administer this program for the first year? The cost to administer this regulation is approximately \$530,000

(d) How much will it cost to administer this program for subsequent years? The cost to administer for subsequent years is estimated to be at least \$530,000.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(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 for this filing.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No cost savings are anticipated for this filing.

(c) How much will it cost the regulated entities for the first year? No changes in costs are anticipated.

(d) How much will it cost the regulated entities for subsequent years? No changes in costs are anticipated.

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)]. Fees will not exceed the major economic impact threshold.

**GENERAL GOVERNMENT
Department of Agriculture
The Office of the State Veterinarian
(Amendment)**

302 KAR 22:150. Cervids.

RELATES TO: KRS 150.730-150.735, 246.030(4), 257.020, 257.030, 257.080, 257.990, Chapter 321, 9 C.F.R. 55, 81.4, 161.1-161.4

STATUTORY AUTHORITY: KRS 150.720(1), 246.295(1), 257.550, 257.552

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.720(1), 246.295(1), and 257.550 require the Department of Agriculture, in cooperation with the Department of Fish and Wildlife Resources, to promulgate administrative regulations pertaining to health requirements, eradication of diseases, and identification of privately owned and farm-raised cervids maintained for the production of meat and other products. This administrative regulation establishes criteria and health requirements necessary to prevent the introduction of chronic wasting disease into Kentucky and develop a herd monitoring system, and establishes requirements for intrastate and interstate movement of farmed cervids.

Section 1. Definitions.

(1) "Adjacent herd" means: A herd of cervids occupying premises that shares a border or boundary line with premises occupied by a chronic wasting disease positive herd, including herd separated by a road or stream; and

(2) "Animal identification number" or "AIN" means a numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal. The AIN consists of fifteen (15) digits, with the first three (3) being the country code (either 840 for the United States at large or a unique code for any U.S. territory that elects to use it in place of the 840 code).

(3) "APHIS" means the Animal and Plant Health Inspection Service of the United States Department of Agriculture.

(4) "Approved laboratory" means the National Veterinary Service Laboratory in Ames, Iowa, or any other laboratory approved by the APHIS.

(5) "Certificate of Veterinary Inspection" or "CVI" means an official document, on a form approved by the chief animal health official of the state of origin or by USDA APHIS Veterinary Services for verification of veterinary inspection that is issued by a licensed and accredited veterinarian.

(6) "Certified" means the status achieved by a herd that has met the standards of the Chronic Wasting Disease Herd Certification Program continuously for at least five (5) years.

(7) "Certified Chronic Wasting Disease (CWD) Herd" or "herd" means a group of cervids under common ownership or supervision that has achieved "certified" status in the Kentucky Herd Certification Program, the federal Chronic Wasting Disease Herd Certification Program, or a state Chronic Wasting Disease Certification Program approved by APHIS or the State Veterinarian.

(8) "Cervid" means deer, elk, moose, caribou, reindeer, and related species and hybrids thereof, including all members of the Cervidae family and hybrids thereof.

(9) "Cervid Chronic Wasting Disease Surveillance and Identification" or "CCWDSI" means the:

(a) Chronic Wasting Disease HCP; and

(b) Chronic Wasting Disease HMP.

(10) "Cervid Herd Plan" means a written herd management agreement or premises management agreement:

(a) Developed by OSV in collaboration with the herd owner to

address compliance issues within an[a] HCP or HMP herd; or

(b) That establishes the steps needed to eradicate CWD from a CWD positive herd, to control the risk of CWD in a CWD exposed or CWD-suspect herd, or to prevent introduction of CWD into that herd or any other herd.

(11) "Chronic Wasting Disease" or "CWD" means a transmissible spongiform encephalopathy of cervids.

(12) "Farmed cervid":

(a) Means cervid livestock that are enrolled in a CCWDSI program and are maintained for propagation, selling, trade, or barter or for taking by any harvest or slaughter method; and

(b) Does not mean any cervid that has not originated from and been continuously maintained within a herd that is enrolled in and complies with an[a] HCP or HMP.

(13) "Exposed" means a cervid that is part of a CWD positive herd, or that has been exposed to a CWD-positive cervid or contaminated premises within the previous five (5) years.

(14) "Harvest" means to slaughter or take by hunting farmed cervids for meat and other products.

(15) "Herd Certification Program" or "HCP" means a program established by this administrative regulation to determine the CWD status of farmed cervid herds.

(16) "Herd Monitoring Program" or "HMP" means a program established by this administrative regulation to monitor farmed cervids in harvesting facilities for CWD.

(17) "Identification" means a device or means of identification approved for use under this administrative regulation by the State Veterinarian.

(18) "Interstate movement" means movement from another state into or out of Kentucky.

(19) "Intrastate movement" means movement solely within the boundaries of Kentucky.

(20) "Move" means to carry, enter, import, ship, or transport; to aid, abet, cause, or induce carrying, entering, importing, mailing, shipping, or transporting; to offer to carry, enter, import, mail, ship, or transport; to receive in order to carry, enter, import, mail, ship, or transport; or to allow any of these activities.

(21) "National Uniform Eartagging System" or "NUES" means a numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal that is USDA approved.

(22) "Office of State Veterinarian" or "OSV" means that office within the Kentucky Department of Agriculture as established in KRS 246.030(4).

(23) "Official Chronic Wasting Disease test" or "CWD test" means any test for the diagnosis of Chronic Wasting Disease approved by APHIS and conducted in a laboratory approved by APHIS in accordance with 9 C.F.R. Part 55.

(24) "Official eartag" means an identification tag approved by APHIS that bears an official identification number for individual animals. Beginning March 11, 2014, all official eartags manufactured bear an official eartag shield. Beginning March 11, 2015, all official eartags applied to animals bear an official eartag shield. The design, size, shape, color, and other characteristics of the official eartag depend on the needs of the users, subject to the approval of the USDA Administrator. The official eartag is tamper-resistant and has a high retention rate in the animal.

(25) "Official identification number" means a nationally unique number that is permanently associated with a cervid and complies with:

(a) National Uniform Eartagging System (NUES);

(b) Animal Identification Number (AIN); or

(c) Any other numbering system approved by the Administrator for the official identification of animals, including a group identification number.

(26) "Owner" is defined by KRS 257.010(14).

(27) "Person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or other legal entity.

(28) "Physical inventory" means an inventory that confirms individual identification of each cervid by hands on observation to include physical or chemical restraint as needed.

(29) "Positive" means a cervid has had a diagnosis of CWD

confirmed by means of two (2) official CWD tests.

(30) "Premises identification number" or "PIN" means a nationally unique number allocated to a premises by a state or federal animal health official and:

(a) Is used in conjunction with a producer's own livestock production numbering system to provide a nationally unique and herd-unique identification number for an animal; and

(b) Is the number system permitted by the state of origin specifically as a CWD program site.

(31) "Quarantine" means an imposed restriction prohibiting movement of live or dead cervids, or parts thereof, to any location without specific written approval of the State Veterinarian.

(32) "Radio Frequency Identification Device" or "RFID" means a device electronically encoded with a unique identification and that complies with the applicable International Standards Organization (ISO) standards and that bears the visual number.

(33) "State" means any state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, or Guam.

(34) "USDA" means the United States Department of Agriculture.

(35) "USDA-accredited veterinarian" means a veterinarian accredited by the USDA as category II in accordance with the provisions of 9 C.F.R. 161.1 to 161.4, and licensed to practice veterinary medicine in their home state.

(36) "Visual inventory" means an inventory done when distance observation of identification of identification devices is possible.

Section 2. All Farmed Cervids Shall Be in a Program. Every farmed cervid in Kentucky shall be enrolled in either the Chronic Wasting Disease Herd Certification Program or the Chronic Wasting Disease Herd Monitoring Program.

Section 3. Required CWD program Training.

(1) Prior to initial enrollment in a CWD program, a minimum of one (1) hour initial educational training provided by the OSV shall be completed.

(2) Supplemental trainings provided by OSV shall be required when there is a change in Chronic Wasting Disease prevalence, change in Kentucky program administrative regulations, or a change in USDA CWD program standards, or any other time deemed necessary by the State Veterinarian to prevent the spread of disease. Notice for any additional training shall be provided at least thirty (30) days in advance of the date.

~~[(3) All persons with a HCP or HMP permit at the date this administrative regulation becomes effective shall complete an educational training for one (1) hour prior to their renewal for the following year.]~~

Section 4. Chronic Wasting Disease Herd Certification Program (HCP).

(1) An[A] HCP permit shall be required to participate in the HCP program. An[A] HCP permit shall be valid from January 1 to December 31 of each year, regardless of the date of application or enrollment.

(a) The applicant for the HCP shall submit:

1. A complete Cervid Chronic Wasting Disease Surveillance Identification (CCWDSI) Herd Certification Program (HCP) or Herd Monitoring Program (HMP) Application;

2. A written statement by a Kentucky-licensed and USDA accredited veterinarian certifying that the veterinarian and the herd owner have a valid veterinarian-client-patient relationship; and

3. An initial fee of \$150. Renewal fees the next year are described in subsection (2) of this section.

(b) The OSV shall grant an[a] HCP permit within thirty (30) days after it receives the completed application package with the required fee. Incomplete applications or insufficient fees shall be returned to the applicant without approval. The OSV shall not approve any application if the applicant owes fees or fines to the KDA.

(c) An[A] HCP participant whose permit expires prior to renewal shall be subject to the penalties established in Section 19 of this administrative regulation.

(2) Annual HCP permit renewal required. Fees shall be based on the officially tagged inventory submitted in paragraph (e) of this subsection. Renewal applicants shall:

(a) Submit a complete Cervid Chronic Wasting Disease Surveillance Identification (CCWDSI) Herd Certification Program (HCP) or Herd Monitoring Program (HMP) Application by November 30 of each year;

(b) Pay a fee of \$135 for herds up to fifty (50) cervids, \$250 for herds between fifty-one (51) and 100, or \$450 for herds containing more than 101 cervids, for applications submitted prior to December 1, preceding the applicable permit year;

(c) Pay a fee of \$150 for herds up to fifty (50) cervids, \$275 for herds between fifty-one (51) and 100, or \$500 for herds containing more than 101 cervids, for applications submitted between December 1 and December 31, preceding the applicable permit year;

(d) Pay a fee of \$250 for herds up to fifty (50) cervids, \$375 for herds between fifty-one (51) and 100, or \$600 for herds containing more than 101 cervids, for applications submitted late, January 1 and after of the applicable permit year; and

(e) Submit a current herd inventory as of the time of application submission, and the most recent reporting documents due to the OSV as required in subsection (3)(c) of this section if not already on file with the OSV.

(f) Permits not renewed by February 15 of the applicable program year will be terminated from the program effective February 16 and not be eligible for renewal. Section 20 of this administrative regulation shall apply as those cervids would be not continuously enrolled and shall not be deemed farmed cervids.

(3) HCP Requirements.

(a) Herds enrolled in this program shall comply with the requirements established in this section and 9 C.F.R. Part 55, Subpart B, and shall follow the USDA Chronic Wasting Disease Standards, and the RFID official identification requirements of Section 8.

1. After an initial permit is issued, the participant shall enroll the herd into the HCP by obtaining movement permits for those cervids moving into the premises. Any additions subsequent to the initial delivery shall be recorded and submitted according to the other timelines established in this administrative regulation.

2. After the first year in the HCP, the participant shall:

a. Conduct the physical inventory and continuously identify cervids as required;

b. Provide any records required by this administrative regulation to the OSV for the cervids; and

c. Maintain and complete the provisions of this administrative regulation and a Cervid Herd Plan, if developed.

(b) Cervid identification requirement.

1. Each cervid shall have at least two (2) forms of cervid identification prior to or at the time of the annual herd inventory, one (1) of which shall be a RFID official identification and one (1) form shall be a visual type of identification, both of which shall be unique to that cervid within the herd.

2. A cervid of any age shall have official identification before being moved from the premises for any purpose.

(c) Cervid inventory.

1. The baseline herd inventory shall consist of the cervids that were delivered initially after program enrollment.

2.

a. An annual herd inventory shall be conducted that reviews all records and includes observation of all cervids in an enclosed area, including physical restraint if necessary, to reconcile all visible identification devices with available records. This required inventory shall be conducted in January, February, March, or April.

b. Beginning May 1, the herd shall be placed in quarantine and no movement shall be permitted until the physical or visual inventory is completed for those herds not completing a visual[physical] inventory January, February, March, or April. The OSV shall determine what style of inventory is required for those not completed prior to May 1.

3. The state veterinarian or an APHIS representative may request additional physical inventories to verify herd compliance with program standards. A physical inventory shall be conducted at

least once in any three (3) year time period, but may occur at any time of the calendar year so that it may be completed at a time when the owner deems appropriate.

4. The owner shall be responsible for assembling, handling, and restraining the cervids, and for all risks and costs incurred, to present the cervids for visual or physical inspection.

5. Additional herd inventory record inspections and reviews shall be conducted quarterly at the cervid premises or at another location mutually agreed to by the owner and the OSV.

(d) Herd Additions.

1. New cervids shall be introduced into the herd only from other herds enrolled in the Kentucky HCP, or from a herd in a state, approved by the OSV, with an USDA-approved CWD Certification Program in which CWD has never been confirmed.

2. New cervids shall not be introduced into the herd unless it has been approved by the State Veterinarian.

3. If cervids are introduced from a herd of lower status, the receiving herd status shall revert to the lower status.

(e) HCP Reporting requirements. The owner shall report to OSV any cervids that escape or disappear and all deaths (including cervids killed by harvest or slaughter) of cervids in the herd.

1. The reporting time frame shall be:

a. For cervids that escape or disappear, a report shall be made within forty-eight (48) hours;

b. For cervids taken by harvest, a report shall be submitted within seven (7) days; and

c. For cervids that die from illness or any other reason, a report shall be submitted within seven (7) days.

2. The report shall include all applicable identification numbers, including the visual tag and the date of the death, disappearance, or escape.

3. Cervids that die or are harvested shall have the required tissue specimens collected and submitted for Chronic Wasting Disease testing except if exempted in writing by request to, and approval of, the OSV. Exemptions shall only be granted in extenuating circumstances, such as natural disaster or a disease event.

4. An APHIS or OSV representative shall investigate herds that fail to comply with testing requirements and shall evaluate the herd's status.

5. Cervid escapes return protocol.

a. Cervids that escape may be returned to the herd only if:

(i) Within seventy-two (72) hours, the cervids are re-captured and the fence is repaired and secured to prevent further escape and meet the requirements established by Kentucky Department of Fish and Wildlife Resources in 301 KAR 2:083. Any cervid recaptured after seventy-two (72) hours shall be introduced back into the herd only with written permission of the OSV; and

(ii) Within seven (7) days of initial escape, an updated inventory is provided to the OSV representative in writing.

b. An OSV representative may require physical inspection of cervids to confirm inventory.

(f) Herd Veterinarian Notice Requirement. The herd veterinarian shall be notified within twenty-four (24) hours of observance of a cervid with clinical signs suggestive of Chronic Wasting Disease.

(g) An owner maintaining separate herds shall comply with the separate-herd requirements established in 9 C.F.R. 55.23.

(h) The herd premises shall have a valid Kentucky Department of Fish and Wildlife Resources permit and shall maintain perimeter fencing meeting the requirements established in KRS 150.730 through 150.735.

(i) The owner shall maintain and provide to the OSV representative upon request the following herd records:

1. Complete inventory of cervids including the official identification and any other identification, and the age and sex of each cervid;

2. A record for each purchased or natural addition to the herd including:

a. The official identification, species, age, and sex of the cervid;

b. The name and address of the person from whom the cervid

was purchased;

c. The address of the herd from which the cervid was purchased;

d. A copy of the CVI that accompanied the cervid for intrastate or interstate movement;

e. Date the purchased addition entered the herd; and

f. Approximate date of birth, if a natural addition;

3. A record of each cervid leaving the herd, including:

a. The date of movement, the name of the person to whom it was shipped, the place to which it was shipped, and a copy of the Certificate of Veterinary Inspection related to the shipment; and

b. A cervid's death or harvest on the premises, including the date of death, the apparent cause of death; the cervid's age, sex, and state-federal official individual cervid identification; date and laboratory submitted for CWD testing, if required; and the disposition of the cervid's carcass. If the carcass was removed from the premises, the record shall identify the carcass' destination and recipient;

4. A record of all individual CWD tests that were conducted on cervids in the herd;

5. Records received from the herd veterinarian related to the veterinary services he or she provided to the herd; and

6. All individual identification numbers (from, for example, tags and electronic implants) associated with each cervid.

(j) Herd status levels.

1. Upon a herd being first enrolled in the Herd Certification Program, the herd shall be placed in first-year status, except that if the herd is comprised solely of cervids obtained from herds already enrolled in the Herd Certification Program, the newly enrolled herd shall have the same status as the lowest status of any herd that provided cervids for the herd.

2. If a herd continues to comply with the requirements of the Herd Certification Program, the herd status shall be upgraded by one (1) year on the anniversary of the program enrollment date.

3. One (1) year after the date a herd was placed in fifth-year status, the herd status shall be changed to "certified". The herd shall remain in "certified" status as long as the herd remains enrolled in the program, if its status is not revoked or suspended in accordance with this administrative regulation or 9 C.F.R. 55.24.

4. A herd owner shall be issued a certificate of "Certified" status upon completing the Herd Certification Program requirements established in this administrative regulation.

5. Renewal of a Certified Cervid Herd. A herd shall be certified for twelve (12) months. For continuous certification, adherence to the provisions in this administrative regulation and all other state laws and administrative regulations pertaining to holding cervids shall be required.

6. The herd enrollment date shall be the latter date of:

a. The physical inventory being completed in accordance with paragraph (c) of this subsection; or

b. The initial cervid delivery.

(k) Disease surveillance procedures. A cervid that is twelve (12) months or older that dies for any reason, including harvest, shall be tested for CWD. The herd owner shall be responsible for sample collection by an OSV certified CWD sample collector, submission, and testing. Samples for testing shall be properly collected, handled, and preserved, and shall be submitted to an approved laboratory within seven (7) days of death and collection. If incidents of mass casualty or mortality events are confirmed by the OSV, the OSV may waive the testing requirements for all cervids and instead only require testing based on risk.

(l) USDA Chronic Wasting Disease Program Standards deficiencies may, based on the nature of the deficiencies, require a Cervid Herd Plan in lieu of, or in addition to, administrative penalties. Deficiencies in required testing, from poor sample quality or for failure to submit a sample, may result in an order from the OSV requiring a similar living cervid be euthanized for CWD testing.

Section 5. Chronic Wasting Disease Herd Monitoring Program (HMP).

(1) An[A] HMP permit shall be required to participate in the HMP program. An[A] HMP permit shall be valid from January 1 to

December 31 of each year, regardless of the date of application or enrollment.

(a) The applicant for the HMP program shall submit:

1. A complete Cervid Chronic Wasting Disease Surveillance Identification (CCWDSI) Herd Certification Program (HCP) or Herd Monitoring Program (HMP) Application;

2. A written statement by a Kentucky-licensed and USDA accredited veterinarian, certifying that the veterinarian and the herd owner have a valid veterinarian-client relationship; and

3. A fee of \$500.

(b) OSV shall grant the HMP permit within thirty (30) days after it receives the completed application package with the required fee. Incomplete applications or insufficient fees shall be returned to the applicant without approval. The OSV shall not approve any application if the applicant owes any fees or fines to the KDA.

(c) HMP participants whose permit expires prior to renewal shall be subject to the penalties in Section 19 of this administrative regulation.

(2) Annual HMP permit renewal required. Renewal applicants shall:

(a) Submit a completed Cervid Chronic Wasting Disease Surveillance Identification (CCWDSI) Herd Certification Program (HCP) or Herd Monitoring Program (HMP) Application by November 30 of each year.

(b) Pay a fee of \$500.

(c) Submit a current herd inventory as of the moment of application, and the most recent reporting documents due to the OSV as required in subsection (4)(c) of this section if not already on file with the OSV.

(d) The permit shall be effective January 1 through December 31 of each year.

(3) Restrictions and limitations on HMP-enrolled cervids and herds.

(a) A cervid shall not leave an HMP-enrolled herd alive.

(b) A cervid shall not be moved to another HMP-enrolled herd.

(c) An[A] HMP herd, or any cervid within an[a] HMP-enrolled herd shall not be eligible to enter the HCP.

(4) HMP Requirements.

(a) Herds enrolled in this program shall comply with the requirements established in this section.

1. After an initial permit is issued, the participant shall enroll the herd into the HMP by obtaining movement permits for those cervids moving into the premises. Any additions subsequent to the initial delivery shall be recorded and submitted according to the other timelines established in this administrative regulation.

2. After the first year in the HMP, the participant shall:

a. Conduct the inventory and continuously identify cervids as required;

b. Submit records to the OSV for the cervids that are required in this administrative regulation; and

c. Maintain and complete the provisions of this administrative regulation and a herd-specific Cervid Herd Plan, if developed.

(b) Cervid identification requirement.

1. Each cervid twelve (12) months of age or older shall have at least two (2) forms of cervid identification, one (1) of which shall be a RFID official identification and one (1) form shall be a visual type of identification, which shall be unique to that cervid within the herd.

2. Any untagged cervid that dies or is harvested shall be officially identified and shall be CWD tested.

(c) Cervid inventory.

1. The baseline herd inventory shall consist of the cervids that were delivered initially after program enrollment.

2. An annual herd inventory shall be conducted and submitted to the OSV that reviews all records and documents that would change the baseline herd inventory.

3. The state veterinarian or an APHIS representative may request a visual or physical inventory to verify herd compliance with program standards. A herd plan may be created to allow images or other data in lieu of a visual inventory.

4. The owner shall be responsible for assembling, handling, and restraining the cervids, and for all risks and costs incurred, to present the cervids for inspection.

5. Cervids that have been in inventory for four (4) years without a visual confirmation shall be presumed dead by the permit holder and written notice be provided to the OSV via mail or email.

(d) Herd Additions. New cervids shall be introduced into the herd only from other herds enrolled in the Kentucky HCP, or from a herd in a state, approved by the OSV, with an USDA-approved CWD Certification Program in which CWD has never been confirmed. All female cervid additions in an HMP shall be spayed or otherwise confirmed by a veterinarian to be incapable of reproduction aft March 31, 2024.

(e) If evidence of natural additions are found, a Cervid Herd Plan shall be developed to eliminate future breeding. Intentional breeding shall not be allowed.

(f) HMP Participant Reporting requirements. The owner shall report to the OSV any cervids that escape or disappear, and all deaths (including cervids killed by harvest or slaughter) of cervids in the herd.

1. This report shall be submitted to the OSV by the close of business on the first business day of each month for the activities of the previous calendar month.

2. The report shall include applicable cervid identification numbers, including the visual tag; the date of the death, disappearance, escape; and the dates the CWD tests were submitted for testing.

3. All cervids that die or are harvested shall have the required tissue specimens collected and submitted for CWD testing.

4. In accordance with 9 C.F.R. 55.23, an APHIS or OSV representative shall investigate herds that fail to comply with testing requirements, which shall be considered noncompliance.

5. Cervid escapes return protocol.

a. Cervids that escape may be returned to the herd only if:

(i) Within seventy-two (72) hours, the cervids are re-captured and the fence is repaired and secured to prevent further escape and meet the requirements established by Kentucky Department of Fish and Wildlife Resources in 301 KAR 2:083. Any cervid recaptured after seventy-two (72) hours shall be introduced back into the herd only with written permission of the OSV; and

(ii) Within seven (7) days of initial escape, an updated inventory is provided to the OSV representative in writing.

b. An OSV representative may require physical inspection of cervids to confirm inventory.

(g) Herd Veterinarian Notice Requirement. The herd veterinarian shall be notified within twenty-four (24) hours of observance of a cervid with clinical signs suggestive of Chronic Wasting Disease.

(h) The herd premises shall have a valid Kentucky Department of Fish and Wildlife Resources permit and shall maintain perimeter fencing meeting the requirements established in KRS 150.730 through 150.735.

(i) The owner shall maintain and provide to the OSV representative upon request the following herd records:

1. Complete inventory of cervids, including the official identification, and any other identification, and the age and sex of each cervid;

2. A record for each purchased or natural addition to the herd, including:

a. The official identification, species, age, and sex of the cervid;

b. The name and address of the person from whom the cervid was purchased;

c. The address of the herd from which the cervid was purchased;

d. A copy of the CVI that accompanied the cervid for intra- or interstate movement;

e. Date the purchased addition entered the herd; and

f. Approximate date of birth, if a natural addition;

3. A record of each cervid leaving the herd including a record of each cervid that died or was harvested on the premises including:

a. The date of death;

b. The apparent cause of death;

c. The cervid's age and sex;

d. State-federal official individual cervid identification, date, and

laboratory submitted for CWD testing, if required; and

e. The disposition of the cervid's carcass. If the carcass left the premises, the record shall identify the carcass destination and recipient;

4. A record of all individual CWD tests that were conducted on cervids in the herd;

5. Records received from the herd veterinarian related to the veterinary services he or she provided to the herd; and

6. All individual identification numbers (from, for example, tags and electronic implants) associated with each cervid.

(j) Disease surveillance procedures. A cervid that is twelve (12) months or older that dies for any reason, including harvest, shall be tested for CWD. The herd owner shall be responsible for sample collection, submission, and testing. Samples for testing shall be properly collected, handled, and preserved, and shall be submitted to an approved laboratory within thirty (30) days of collection. Deficiencies in required testing, from poor sample quality or for failure to submit a sample, may result in an order from the OSV requiring a similar living cervid be euthanized for CWD testing.

Section 6. Testing, Investigation, and Quarantine.

(1) Surveillance testing procedures.

(a) CWD testing shall be in accordance with the procedures established in 9 C.F.R. 55.8.

(b) A positive or non-negative of CWD by an approved laboratory shall be sent to the National Veterinary Service Laboratory for confirmation.

(c) If required tissues from test eligible cervids are not submitted for laboratory diagnosis by the cervid owner, the state veterinarian shall revoke the permit or implement a mutually agreed upon Cervid Herd Plan.

(2) Investigation of CWD-positive cervids.

(a) An epidemiological investigation in accordance with 9 C.F.R. 55.23 shall be conducted by OSV or APHIS VS for all cervids diagnosed at an approved laboratory CWD positive or suspect.

(b) All CWD-positive herds and all source, exposed, and adjacent herds and the premises where these herds are located shall be investigated epidemiologically by OSV.

(3) Duration of Quarantine. Quarantines issued by the State Veterinarian for CWD in accordance with this administrative regulation shall be removed as established in paragraphs (a) and (b) of this subsection.

(a) A premises shall not be removed from quarantine until after completion of the cervid herd plan and five (5) years of compliance with all provisions of 9 C.F.R. Part 55.

(b) An adjacent or exposed herd or premises may be removed from quarantine only after an epidemiological investigation and by order of the OSV.

Section 7. CWD Sample Collection Training.

(1) Required CWD samples shall be collected by a licensed accredited veterinarian or an individual certified by the OSV.

(2) To become certified, an individual shall:

(a) Submit a request for certification to the OSV at Statevet@ky.gov or contact the OSV; and

(b) Attend a training course offered by the OSV.

(3) Certification is valid for five (5) years from the date of training course or until new sample collection protocols have been mandated by OSV or USDA. Renewal certification shall require completion of a renewal form.

(4) Certified individuals shall comply with CWD collection and submission protocols. Failure to submit quality samples may result in revocation of certification status.

(5) Certified individual shall maintain record of sample collections for ten (10) years. Records shall include a copy of the laboratory submission form or a generated report which contains the following:

(a) Date of sample collection;

(b) Premises Name and City where sample collection occurred;

(c) List of official identification devices of each sample;

(d) Number of samples collected; and

(e) Name of Laboratory where samples were submitted.

Section 8. Certificate of Veterinary Inspection.

(1) A Certificate of Veterinary Inspection shall remain valid for thirty (30) days after date of inspection.

(2) A CVI shall contain:

(a) Identification of each animal recorded on the certificate;

(b) A RFID and visual identification for each cervid;

(c) The species, breed, sex, and age of each cervid;

(d) The name and address of the owner, cosigner, or agent shipping the cervid, and phone number of each;

(e) The location from which the animal is loaded for movement;

(f) The name and address of the consignee or person receiving the cervid;

(g) The location at which the animal will be received;

(h) The purpose of the movement and the total number of cervids;

(i) All non-applicable data fields crossed out by the USDA-accredited Veterinarian prior to signing;

(j) The movement permit number issued by the OSV;

(k) The following statement or one substantially similar: "I certify as an accredited veterinarian that the above described animals have been inspected by me on this date and that they are not showing signs of infection or communicable disease. The vaccinations and results of tests are as indicated on the certificate. The animals listed on this certificate meet the state of destination requirements and federal interstate requirements"; and

(l) The signature, USDA category II accreditation number, and phone number of the veterinarian.

(3) Paper submitted Certificate of Veterinary Inspection.

(a) The first physical page shall be mailed or otherwise delivered to the office of the state veterinarian in the origin state within seven (7) days of the date it is written.

(b) An exact replica image (a scan in a PDF) of the first page may be submitted in lieu of the first physical page required in paragraph (a) of this subsection by submitting via electronic mail within seven (7) days of the date it is written to Statevet@ky.gov.

(c) The second page shall physically accompany the cervid being moved and be readily accessible during the movement.

(d) The third page shall be sent to the Animal Health Official in the state of destination within seven (7) days of the date it is written.

(e) The fourth page shall be retained by the issuing veterinarian for at least five (5) years from the date of issuance.

(f) A legible copy of any supplemental pages shall be stapled to the original and each copy of the CVI.

(4) Electronically submitted CVIs.

(a) Certificate of Veterinary Inspection and Permit may be submitted via an importable format as approved by the OSV.

(b) Cervids moving with an electronically submitted Certificate of Veterinary Inspection shall be accompanied by a paper copy or have the electronic material stored on a device that may be read immediately upon request.

(5) A person shall not issue a CVI bearing the seal of the Commonwealth of Kentucky unless that person is a Kentucky licensed and USDA category II accredited veterinarian.

Section 9. Movement Permit.

(1) A person shall not move a cervid within or into Kentucky without first obtaining a permit from the OSV at least forty-eight (48) hours prior to the movement, unless approved in writing by the OSV after consideration of the risks involved.

(2) Proof of required vaccinations or other applicable health practices to ensure disease prevention based on place or origin, as found on the Web site at www.kyagr.gov, shall be completed prior to permit issuance. Instructions for a permit may be obtained on the Web site.

(3) Movement permit instructions may be obtained by calling OSV at 502-573-0282, Monday through Friday, 8 a.m. EST to 4:30 p.m. EST.

(4) Required testing or vaccination. Required tests and vaccinations shall be performed or verified by a:

(a) Licensed and USDA category II accredited veterinarian;

(b) Designee of the State Veterinarian; or

- (c) Designee of the federal government.
- (5) Required tests shall be conducted at no expense to the Commonwealth of Kentucky.
- (6) Required laboratory tests shall be conducted in a state-federal approved laboratory.

Section 10. Official Identification and Other Required Identification.

(1) Beginning July 1, 2020, RFID official identification shall be applied in any initial tagging event, retagging event, or anytime a cervid is restrained by any method, including permitted movements. All imported cervids shall require an RFID at the time of importation beginning July 1, 2020. This RFID shall be cross referenced with any other existing official identification at the time of application. Existing official identification shall not be removed without the prior written approval of the OSV.

(2) Methods of official identification. An official individual identification shall consist of a set of alphanumeric characters or physical characteristics that are uniquely associated with an individual cervid and that constitute:

(a) Official USDA NUES that was applied prior to June 30, 2020; and

(b) An RFID that:

1. The RFID uniquely identifies the animal and is USDA approved;

2. The RFID is attached to the animal;

3. The RFID is registered to a PIN or to a person; and

4. Only one (1) official RFID is placed on an animal.

(3) Use of more than one (1) official eartag.

(a) Any person applying the additional official eartag shall record the following information about the event, and submit to the OSV within seven (7) days the required information, and maintain the record for at least ten (10) years:

1. The date the additional official eartag is added;

2. The reason for the additional official eartag device; and

3. The official identification numbers of the new official eartag and the one or ones already attached to the animal.

(b) An eartag with an Animal Identification Number (AIN) beginning with the 840 prefix (either radio frequency identification or visual-only tag) may be applied to a cervid that is already officially identified with one (1) or more National Uniform Eartagging System tags. The person applying the Animal Identification Number eartag shall record the date the Animal Identification Number tag is added and the official identification numbers of any official eartags and shall maintain those records for at least ten (10) years.

(4) Removal or loss of official identification devices.

(a) Removal of official identification shall be prohibited, except as approved in writing by the OSV or a USDA area veterinarian in charge if a device needs to be replaced.

(b) If a cervid loses an official identification device:

1. A replacement tag with a different official identification number may be applied. The person applying a new official identification device with a different official identification number shall record the following information about the event and maintain the record for at least ten (10) years:

a. The date the new official identification device was added;

b. The official identification number on the device; and

c. The official identification number on the old device, if known.

2. Replacement of a temporary identification device with a new official identification device shall be considered to be a retagging event and shall be noted on the Retag Form.

(5) Removal of official identification, without prior written approval of the OSV shall be strictly prohibited.

(6) Replacement records required. Any time an official identification device is replaced, as authorized by OSV or the USDA, the person replacing the device shall record the following information about the event and maintain the record for at least five (5) years:

(a) The date on which the previous device was removed;

(b) Contact information for the location where the device was removed;

(c) The official identification number (to the extent possible) on

the device that was removed;

(d) The type of device removed (for example, metal eartag or RFID eartag);

(e) The reason for the removal of the former device;

(f) The new official identification number on the replacement device; and

(g) The type of replacement device that was applied to replace the former device.

Section 11. Premises of Origin Location.

(1) POL information shall be provided by the person seeking the permit for the premises from which the cervids are to be loaded upon seeking a movement permit.

(2) The POL of the specific location the cervids were loaded shall include:

(a) A PIN issued by the USDA or the Animal Health Official in the state of origin or a LID; and

(b) The owner at the time of movement and that owner's address and contact information.

Section 12. Requirements for Interstate Movement into Kentucky.

(1) A person or hauler shall not move a cervid into Kentucky without first obtaining a CVI from a licensed and USDA category II accredited veterinarian;

(2) Obtained a movement permit from the OSV at least forty-eight (48) hours prior to movement and scheduling by the OSV, that includes a scheduled appointment for delivery of cervids between the hours of 6 a.m. and 9 p.m.; and

(3) An OSV representative, USDA representative, or an USDA category II accredited veterinarian shall be present for the unloading of the cervids at the point of destination at the time scheduled in (2) and shall be responsible for removing the transport seal and observing the offloading.

(4) An entry permit shall not be issued for a cervid that does not have certified status or an equivalent status, as documented by a certificate issued in accordance with 9 C.F.R. 81.4. An entry permit shall not be issued for a cervid that originated in, or at any time resided, in a state where CWD has been confirmed in either wild or captive cervids.

(5) An entry permit shall not be issued for a cervid that is not:

(a) Negative to an official tuberculosis test within ninety (90) days of entry; or

(b) Originating from a cervid tuberculosis accredited herd. The herd accreditation number and the last herd test date shall be listed on the CVI.

Section 13. Requirements for Movement Within Kentucky.

(1) A movement permit issued by the OSV and CVI shall be required prior to cervid movement within Kentucky.

(2) A CVI shall not be required if the movement is from the same herd to a different permitted premises within the same farm, if the cervid has official identification, prior to the movement.

(3) Movement shall not commence until forty-eight (48) hours after the issuance of the permit.

(4) An OSV representative, USDA representative, or an USDA category II accredited veterinarian shall be present at the loading at the point of origin, or the unloading of the cervids at the point of destination for movements to a different premises.

(5) The requirements of this section shall be the responsibility of the owners, agents, and haulers of the moved cervid.

Section 14. Requirements for Movement for Export from Kentucky.

(1) A movement permit issued by the OSV and CVI shall be required prior to cervid movement from Kentucky.

(2) Movement shall not commence until forty-eight (48) hours after the issuance of the permit by the OSV and scheduling.

(3) All cervids being exported from Kentucky shall have movement documentation and any applicable permits as required by the state of destination, and have these documents immediately available for inspection.

(4) A cervid shall not leave Kentucky until:

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(a) The CVI is written to meet the state of destination requirements by a Kentucky licensed category II veterinarian; and

(b) The owner, agent, or hauler contacts the OSV designee at least forty-eight (48) hours in advance of the movement to schedule an appointment for departure inspection and movement documentation between the hours of 6 a.m. and 9 p.m.

Section 15. Requirements for Movement Through Kentucky. Cervids moving through Kentucky shall have movement documentation and any applicable permits as required by the state of destination, and have these documents immediately available for inspection. A Kentucky movement permit shall not be required for direct movement through Kentucky. Persons directly moving cervids through Kentucky may voluntarily obtain a permit from the OSV.

Section 16. Reindeer Exhibition.

(1) Any reindeer exhibiting in the state of Kentucky shall obtain written permission of the OSV.

(2) Requests for an exhibition permit shall be made to the OSV in writing or electronically at statevet@ky.gov a minimum of ten (10) business days prior to the movement to the exhibit.

Section 17. Voluntary Accreditation and Certification Programs.

(1) Cervid owners wishing to seek a voluntary herd certification for brucellosis shall follow the provisions established in APHIS 91-45-16, Brucellosis in Cervidae.

(2) Cervid owners wishing to seek a voluntary herd accreditation for tuberculosis eradication shall follow the provisions established in APHIS 91-45-011, Bovine Tuberculosis Eradication.

(3) After the completion of terms in APHIS 91-45-011 or APHIS 91-45-16, the OSV shall issue a certificate, for the respective disease, that shall be valid in Kentucky for a period of thirty-six (36) months from issuance.

Section 18. Retention of Records.

(1) Intrastate movement or sales documents shall be maintained by both the buyer and the seller for at least ten (10) years after the movement of the cervids.

(2) Official identification device distribution records. Any veterinarian who distributes official identification, shall maintain distribution lists and documents for at least ten (10) years after issuance.

(3) Interstate movement records and documentation that is required by this administrative regulation shall be maintained for at least ten (10) years.

(4) Herd plans, inventory records, and disposition of cervid records shall be maintained for at least ten (10) years.

Section 19. Penalties.

(1) Penalties for failure to comply with standards established in this administrative regulation.

(a) OSV shall have the authority to revoke or suspend a herd's permit for the Herd Certification Program or the Herd Monitoring Program if a person:

1. Falsifies information on an enrollment application, falsifies subsequent information required for continued enrollment, or refuses to produce documents requested by a representative of OSV;

2. Fails to comply with requirements in this administrative regulation on cervid identification, cervid inventory, herd records, testing, or cervid movement;

3. Or facility fails to remain in compliance with KRS Chapters 257 or 150, or any administrative regulation promulgated under the authority thereof;

4. Fails to comply with an instruction from a representative of OSV; or

5. Fails to produce any document required to be created or maintained by this administrative regulation.

(b) In accordance with KRS 257.990, a permit holder shall be subject to a monetary fine for violation of this administrative regulation.

(2) Penalties for failure to comply with Section 8, 9, 10, or 11 of

this administrative regulation.

(a) In accordance with KRS 150.740(6), a person shall be guilty of a Class D felony upon conviction; and

(b) Upon conviction of a second violation, a person shall be permanently ineligible for renewal of a captive cervid permit.

(3) In accordance with KRS 150.740(7), the Kentucky Department of Fish and Wildlife Resources shall have authority to seize captive cervids that were imported into the Commonwealth in violation of this administrative regulation or KRS 150.740 and 257.550.

(4) Any person whose permit is revoked shall not reapply to the HCP or HMP programs for a period of five (5) years.

(5) Herds enrolled in HMP or HCP programs whose permit holders fail to reapply for permits on or before the application deadline shall be immediately placed in quarantine. These herds shall be subject to a physical herd inventory prior to permit issuance. A hunting or harvest shall not take place during the quarantine period. Herds shall not be re-enrolled in any program without first paying the initial fee of \$150 and the renewal fee as required in either the HCP or HMP program.

(6) Removal of official identification, from a cervid without written permission of the OSV shall result in the loss of status for all cervids inside the herd.

Section 20. Expiration or Removal of HCP or HMP Status. All entities that exit an HCP or HMP program shall be referred to the Kentucky Department of Fish and Wildlife for herd disposal.

Section 21. Material Incorporated by Reference.

(1) The following material is incorporated by reference:

(a) "Cervid Chronic Wasting Disease Surveillance Identification (CCWDSI) Herd Certification Program (HCP) or Herd Monitoring Program (HMP) Application", October 2020;

(b) "Deceased Animal Report", May 2019;

(c) "Herd/Flock Additions", October 2020;

(d) "Herd/Flock Deletions", October 2020;

(e) "Retag Form", February 2017;

(f) "USDA Chronic Wasting Disease Program Standards", May 2019;

(g) "APHIS 91-45-16, Brucellosis in Cervidae", September 2003; and

(h) "APHIS 91-45-011, Bovine Tuberculosis Eradication", January 1999.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Animal Health, 111 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RYAN QUARLES, Commissioner of Agriculture

APPROVED BY AGENCY: June 14, 2023

FILED WITH LRC: June 14, 2023 at 3:55 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2023 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

FISCAL NOTE

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This filing creates the rules for cervid farming.

(b) The necessity of this administrative regulation: This filing is necessary to create a uniform set of rules and processes cervid farming.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This filing creates a uniform set rules and processes for cervid farming.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This filing assists with the statute by incorporating the federal manual for cervid farming.

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

(a) How the amendment will change this existing administrative regulation: This filing removes training requirements after the initial one. The filing creates language for limiting breeding in an HMP, and makes clear the process for exiting the program.

(b) The necessity of the amendment to this administrative regulation: The changes are required to add clarity about longstanding expectations.

(c) How the amendment conforms to the content of the authorizing statutes: This filing adds clarity to the regulations where the statutes granted broad authority to the KDA to create rules.

(d) How the amendment will assist in the effective administration of the statutes: The changes are required to add clarity about longstanding expectations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects entities and persons seeking be in cervid farming. Approximately 119 HCP and 7 HMP participants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All persons seeking participate in cervid farming need to comply with the minimum standards laid out in this filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost depends on the activity the regulated entity is involved in and the size of the herd.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will be able cervid farm.

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

(a) Initially: The KDA estimates \$275,000 total annually.

(b) On a continuing basis: The KDA estimates at least \$275,000 total annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of fees and the KDA general fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Fee establishments are required to attempt to cover part of the program costs.

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

(9) TIERING: Is tiering applied? No, all entities are treated the same. The only fee difference is based on volume held.

(1) What 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 KDA.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 257

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 KDA expects to receive \$57,000 annually at current volumes purchased.

(b) How 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 KDA expects to receive \$57,000 annually at current volumes purchased as a projection.

(c) How much will it cost to administer this program for the first year? The cost to administer the Cervid program is \$275,000

(d) How much will it cost to administer this program for subsequent years? The cost to administer the Cervid program for subsequent years is estimated to be at least \$275,000.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Cost savings for regulated entities will remain at current levels.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Cost savings for regulated entities will remain at current levels is a reasonable expectation.

(c) How much will it cost the regulated entities for the first year? Costs will depend on the volume purchased in the prior year at application time.

(d) How much will it cost the regulated entities for subsequent years? Costs will depend on the volume purchased in the prior year at application time.

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)]. Fees will not exceed the major economic impact threshold.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality
(Amendment)**

401 KAR 51:010. Attainment status designations.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 50, 51, 52, 53, 58, 75, 81.318, 42 U.S.C. 7401-7675[7671q]
STATUTORY AUTHORITY: KRS 224.10-100(5), 224.20-110, 42 U.S.C. 7407

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes the designation status of all areas of the Commonwealth of Kentucky with regard to attainment of the ambient air quality standards.

Section 1. Definitions.

(1) "Rest of state" means the remainder of the state has been designated and identified on a county by county basis.

(2) "Road" means a Kentucky route, a county road, a lane, or a U.S. route, highway, or interstate.

(3) "Statewide" means the entire state has been designated on a county by county basis.

Section 2. Attainment Status Designations.

(1) The attainment status of areas of the Commonwealth of Kentucky with respect to the ambient air quality standards for carbon monoxide, lead, nitrogen oxides, ozone, particulate matter, and sulfur dioxide shall be as listed in Sections 4 through 10 of this administrative regulation.

(2) Within sixty (60) days of revision by the U.S. Environmental Protection Agency (U.S. EPA) of a national ambient air quality standard, the cabinet shall review applicable data and submit to the U.S. EPA a revision to the attainment - nonattainment list pursuant to 42 U.S.C. 7407(d)(1).

(3) A road, junction, or intersection of two (2) or more roads that delineates a nonattainment boundary for an area that is a portion of a county designated as nonattainment for ozone for any classification except marginal, shall include as nonattainment an area extending 750 feet from the center of the road, junction, or intersection.

Section 3. Attainment Timetable. Primary and secondary ambient air quality standards shall be attained as expeditiously as practicable.

Section 4. Attainment Status Designations for Carbon Monoxide (CO). 1971 Standard:

Designated Area	Designation Type
Statewide	Unclassifiable/Attainment

Section 5. Attainment Status Designations for Lead (Pb). 2008 Standard:

Designated Area	Designation Type
Statewide	Unclassifiable/Attainment

Section 6. Attainment Status Designations for Nitrogen Oxides (NO₂).**(1) 1971 Annual Standard:**

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than Standards
Statewide		X

(2) 2010 One (1) Hour Standard:

Designated Area	Designation Type
Statewide	Unclassifiable/Attainment

Section 7. Attainment Status Designations for Ozone (O₃).

(1) The 1971 One (1) Hour Standard was revoked effective June 15, 2005, for all areas in the Commonwealth of Kentucky. The Cincinnati-Hamilton, Edmonson County, Huntington-Ashland, Lexington-Fayette, Louisville, Owensboro, and Paducah areas

shall be considered maintenance areas for the one (1) hour national ambient air quality standards for the purposes of 40 C.F.R. Part 51, Subpart X.

(2) 1997 Eight (8) Hour Primary and Secondary Standard:

Designated Area	Designation Type
Boone County	Attainment ⁽¹⁾
Boyd County	Attainment ⁽¹⁾
Bullitt County	Attainment ⁽¹⁾
Campbell County	Attainment ⁽¹⁾
Christian County	Attainment ⁽¹⁾
Jefferson County	Attainment ⁽¹⁾
Kenton County	Attainment ⁽¹⁾
Oldham County	Attainment ⁽¹⁾
Rest of state	Unclassifiable/Attainment

Footnote: ⁽¹⁾ Existing sources located in areas previously designated as nonattainment shall continue to comply with all applicable conditions pursuant to 401 KAR Chapters 59 and 61.

(3) 2008 Eight (8) Hour Primary and Secondary Standard:

Designated Area	Designation Type
Boone County (part) 2000 Census tracts: 701, 702, 703.01, 703.04, 703.05, 703.06, 703.07, 703.08, 703.09, 704.01, 704.02, 705.01, 705.02, 706.03	Attainment ⁽¹⁾
Campbell County (part) 2000 Census tracts: 501, 502, 503, 504, 505, 506, 511.01, 511.02, 512, 513, 519.01, 519.03, 519.04, 521, 522, 523.01, 523.02, 524, 525, 526, 528, 529, 530, 531	Attainment ⁽¹⁾
Kenton County (part) 2000 Census tracts: 603, 607, 609, 610, 611, 612, 613, 614, 616, 636.03, 636.04, 636.05, 636.06, 638, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655.01, 655.02, 656, 657, 658, 659, 668, 669, 670, 671	Attainment ⁽¹⁾
Rest of state	Unclassifiable/Attainment

Footnote: ⁽¹⁾ Existing sources located in areas previously designated as nonattainment shall continue to comply with all applicable conditions pursuant to 401 KAR Chapters 59 and 61.

(4) 2015 Eight (8) Hour Primary and Secondary Standard:

Designated Area	Designation Type	[Classification]
Boone County (part) The entire county except for 2010 U.S. Census Tracts 706.01 and 706.04	Attainment ⁽¹⁾ [Nonattainment]	[Marginal]
Bullitt County	Attainment ⁽¹⁾ [Nonattainment]	[Marginal]
Campbell County (part) The entire county except for 2010 U.S. Census Tracts 520.01 and 520.02	Attainment ⁽¹⁾ [Nonattainment]	[Marginal]
Jefferson County	Attainment ⁽¹⁾ [Nonattainment]	[Marginal]
Kenton County (part) The entire county except for 2010 U.S. Census Tracts 637.01 and 637.02	Attainment ⁽¹⁾ [Nonattainment]	[Marginal]
Oldham County	Attainment ⁽¹⁾ [Nonattainment]	[Marginal]
Rest of state	Attainment/Unclassifiable	

Footnote: ⁽¹⁾ Existing sources located in areas previously designated as nonattainment shall continue to comply with all applicable conditions pursuant to 401 KAR Chapters 59 and 61.

Section 8. Attainment Status Designations for PM_{2.5}.

(1) 1997 Annual Primary and Secondary Standard:

Designated Area	Designation Type
Boone County	Attainment ⁽¹⁾
Boyd County	Attainment ⁽¹⁾
Bullitt County	Attainment ⁽¹⁾
Campbell County	Attainment ⁽¹⁾
Jefferson County	Attainment ⁽¹⁾
Kenton County	Attainment ⁽¹⁾
Lawrence County (part)The area described by U.S. Census 2000 block group identifier 21-127-9901-6	Attainment ⁽¹⁾
Rest of state	Unclassifiable/Attainment

Footnote: ⁽¹⁾ Existing sources located in areas previously designated as nonattainment shall continue to comply with all applicable conditions pursuant to 401 KAR Chapters 59 and 61.

(2) 2012 Annual Primary Standard:

Designated Area	Designation Type
Statewide	Unclassifiable/Attainment

(3) 1997 Twenty-four (24) Hour Primary and Secondary Standard:

Designated Area	Designation Type
Statewide	Unclassifiable/Attainment

(4) 2006 Twenty-four (24) Hour Primary and Secondary Standard:

Designated Area	Designation Type
Statewide	Unclassifiable/Attainment

Section 9. Attainment Status Designations for Sulfur Dioxide (SO₂).

(1) 1971 Primary and Secondary Standard:

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Statewide				X

(2) 2010 Primary Standard:

Designated Area	Designated Type
Campbell County (part)That portion of Campbell County, which lies south and west of the Ohio River and is described as follows: Beginning at geographic coordinates 38.9735 North Latitude, 84.3017 West Longitude on the edge of the Ohio River running southwesterly to Kentucky Highway 1566; thence continuing running southwesterly along Kentucky Highway 1566 to Kentucky Highway 9 (AA Highway); thence running northwesterly along Kentucky Highway 9 (AA Highway) from Hwy 1566 to Interstate 275; thence running northeasterly along Interstate 275 to Highway 2345 (John's Hill Road), Hwy 2345 to US-27, US-27 to I-275, I-275 to the Ohio River; thence running southeasterly along the Ohio River from I-275 to geographic coordinates 38.9735 North Latitude, 84.3017 West Longitude	Attainment ⁽¹⁾
Henderson-Webster Counties, Kentucky Henderson County (part).Webster County (part).That portion of Henderson and Webster Counties encompassed by the polygon with the 48 vertices using Universal Traverse Mercator (UTM) coordinates of North American Datum 1983	Nonattainment

(NAD83) as follows: (1) Kentucky 520, Upper Delaware Rd to the Green River boundary at 463979.00 Easting (E), 4171000.03 Northing (N); (2) The Green River boundary to JZ Shelton Rd 459058.03 E, 4160832.96 N; (3) JZ Shelton Rd to Kentucky 370 457811.00 E, 4159192.96 N; (4) Kentucky 370 to Pennyrile Parkway I-69 457089.96 E, 4159452.95 N; (5) Pennyrile Parkway I-69 to Sassafras Grove Rd 457675.35 E, 4156244.55 N; (6) Sassafras Grove Rd to US 41 456236.68 E, 4156125.75 N; (7) US 41 to Slaughters Elmwood Rd 457442.82 E, 4153425.68 N; (8) Slaughters Elmwood Rd to Railroad Track (NW) 456589.41 E, 4153424.43 N; (9) Railroad Track (NW) to Breton Rd 453677.09 E, 4155992.29 N; (10) Breton Rd to Kentucky 1835 453079.74 E, 4154924.00 N; (11) Kentucky 1835 to Kentucky 138 450702.89 E, 4153141.51 N; (12) Kentucky 138 to Crowder Rd 452587.06 E, 4152032.38 N; (13) Crowder Rd to Kentucky 120 453030.14 E, 4149175.08 N; (14) Kentucky 120 to Gooch Jones Rd 447528.25 E, 4147663.88 N; (15) Gooch Jones Rd to John Roach Rd 446551.75 E, 4150042.51 N; (16) John Roach Rd to Old Dixon Slaughters Rd 447462.17 E, 4151329.04 N; (17) Old Dixon Slaughters Rd to Old Dixon Rd 446532.28 E, 4152143.23 N; (18) Old Dixon Rd to Kentucky 138 446849.49 E, 4152437.09 N; (19) Kentucky 138 to Carnel Brooks Rd 450196.38 E, 4153305.18 N; (20) Carnel Brooks Rd to Rakestraw Bottoms Rd 450079.34 E, 4154326.39 N; (21) Rakestraw Bottoms Rd to Kentucky 132 447141.40 E, 4157145.04 N; (22) Kentucky 132 to Kentucky 283 444025.55 E, 4156172.90 N; (23) Kentucky 283 to Beckley Osbourne Rd 444300.82 E, 4158111.35 N; (24) Beckley Osbourne Rd to Dixon Wanamaker Rd 442067.07 E, 4158641.90 N; (25) Dixon Wanamaker Rd to Kentucky 191 441887.88 E, 4161614.33 N; (26) Kentucky 191 to D Melton Rd 442743.25 E, 4161250.11 N; (27) D Melton Rd to Knoblick Creek Rd 443688.82 E, 4162093.08 N; (28) Knoblick Creek Rd to US 41A 442319.35 E, 4163220.45 N; (29) US 41A to Dixon 1 Rd 443500.62 E, 4170518.52 N; (30) Dixon 1 Rd to GF Sights Rd 443094.58 E, 4170166.59 N; (31) GF Sights Rd to Cairo Dixie Rd 441341.46 E, 4170978.60 N; (32) Cairo Dixie Rd to Liles Cairo Rd 442919.00 E, 4173140.24 N; (33) Liles Cairo Rd to US 41A 443124.23 E, 4173204.51 N; (34) US 41A to Cairo Hickory Grove Rd 442860.28 E, 4174017.18 N; (35) Cairo Hickory Grove Rd to Pruitt Agnew Rd 446056.06 E, 4175740.98 N; (36)

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Pruitt Agnew Rd to Kentucky 1299 447662.11 E, 4180049.93 N; (37) Kentucky 1299 to Anthoston Frog Island Rd 448905.37 E, 4176327.31 N; (38) Anthoston Frog Island Rd to Kentucky 136 452613.63 E, 4179047.02 N; (39) Kentucky 136 to Upper Delaware Rd 454451.59 E, 4177687.26 N; (40) Upper Delaware Rd to Barren Church Rd S 456153.23 E, 4177723.20 N; (41) Barren Church Rd S to Barren Church Rd N 457912.85 E, 4180247.83 N; (42) Barren Church Rd N to Kentucky 1078 458542.52 E, 4181615.55 N; (43) Kentucky 1078 to Jones Brothers Rd 461322.00 E, 4179952.85 N; (44) Jones Brothers Rd to Kentucky 416 461209.84 E, 4177755.55 N; (45) Kentucky 416 to Kentucky 1078 463492.08 E, 4178026.50 N; (46) Kentucky 1078 to Onionville Rd 464177.31 E, 4177054.13 N; (47) Onionville Rd to Work Road 465476.34 E, 4176076.78 N; (48) Work Road to Upper Delaware Rd 462529.15 E, 4173036.52 N.	
Jefferson County (part) That portion of Jefferson County compassed by the polygon with the vertices using Universal Traverse Mercator (UTM) coordinates in UTM zone 16 with datum NAD83: Ethan Allen Way extended to the Ohio River at UTM Easting (m) 595738, UTM Northing 4214086 and Dixie Highway (US60 and US31W) at UTM Easting (m) 597515, UTM Northing 4212946; Along Dixie Highway from UTM Easting (m) 597515, UTM Northing 4212946 to UTM Easting (m) 595859, UTM Northing 4210678; Near the adjacent property lines of Louisville Gas and Electric-Mill Creek Electric Generating Station and Kosmos Cement where they join Dixie Highway at UTM Easting (m) 595859, UTM Northing 4210678 and the Ohio River at UTM Easting (m) 595326, UTM Northing 4211014; Along the Ohio River from UTM Easting (m) 595326, UTM Northing 4211014 to UTM Easting (m) 595738, UTM Northing 4214086	Attainment ⁽¹⁾
Ohio County	Unclassifiable
Pulaski County	Unclassifiable
Rest of state	Attainment/Unclassifiable

Footnote: ⁽¹⁾ Existing sources located in areas previously designated as nonattainment shall continue to comply with all applicable conditions pursuant to 401 KAR Chapters 59 and 61.

Section 10. Attainment Status Designations for Total Suspended Particulates (TSP). 1971 Standard:

Designated Area	Does Not Meet Primary Standard	Does Not Meet Secondary	Cannot Be Classified	Better Than National Standard
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	s	Standards		s
Bell County				X
Boyd County			X	
That portion of Bullitt County in Shepherdsville				X
That portion of Campbell County in Newport				X
That portion of Daviess County in Owensboro bordered by the Ohio River on the north, by Frederica Street projected to the river on the west, by Fourth Street and U.S. 60 on the south, and by the Beltline (KY 212) projected to the river on the east			X	
That portion of Henderson County in Henderson			X	
Jefferson County			X	
That portion of Lawrence County in Louisa			X	
McCracken County				X
That portion of Madison County in Richmond			X	
Marshall County				X
Muhlenberg County				X
That portion of Perry County in Hazard			X	
That portion of Pike County in Pikeville			X	
That portion of Whitley County in Corbin				X
Rest of state				X

REBECCA W. GOODMAN, Secretary

APPROVED BY AGENCY: June 13, 2023

FILED WITH LRC: June 15, 2023 at 11:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A virtual public hearing on this administrative regulation amendment will be held on August 31, 2023 at 10:00 a.m. (Eastern Time). The public hearing can be accessed at the following website address: <https://us02web.zoom.us/j/82454910621?pwd=dGZpOEIGMWpST>

nVITjQvRTk1YytYUT09 or can be accessed by phone: +1 646 931 3860 US using meeting code: 824 5491 0621 and passcode: 473374. Please note that registration is required to participate in this hearing. You must either email your name and mailing address to Lisa.C.Jones@ky.gov or mail this information to Lisa Jones, Division for Air Quality, 300 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601. Please put "Registration for Attainment Status Designations Hearing" as the subject line, and state in the body of the message if you plan to speak during the hearing. If no one registers to speak by August 24, 2023, then the hearing will be cancelled. Written comments shall be accepted until August 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation amendment to the contact person. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Lisa Jones, Environmental Scientist III, Division for Air Quality, 300 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 782-1288, Fax: (502) 564-4245, Email Lisa.C.Jones@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Jones

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation designates the status of all areas of the Commonwealth (Commonwealth) with regard to attainment of the national ambient air quality standards. Under section 107 of the Clean Air Act, the state has the primary responsibility of assuring air quality within the entire geographic area by submitting an implementation plan that specifies the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality region in that state.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because it designates whether an area is attaining national ambient air quality standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) authorizes the Energy and Environment Cabinet (Cabinet) to promulgate administrative regulations for the prevention, abatement, and control of air pollution. KRS 224.20-110 prohibits pollution of the air under the jurisdiction of the Commonwealth in contravention of the emission standards or the ambient air standards adopted by the Cabinet. Section 107 of the Clean Air Act provides states with the primary responsibility for assuring air quality within the entire geographic area of the state. This administrative regulation designates the status of all areas of the Commonwealth with regard to attainment of the National Ambient Air Quality Standards (NAAQS).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Kentucky State Implementation Plan (SIP) specifies the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in the state depending on the attainment status designation of the area as established in this 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 proposed amendment to this administrative regulation will update the attainment status of geographic areas in Kentucky for new and revised national primary and secondary ambient air quality standards.

(b) The necessity of the amendment to this administrative regulation: The proposed amendment to this administrative regulation updates the state designations based on the most recent air quality data.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed amendment to this administrative regulation conforms to the content of the authorizing statutes by identifying the status of areas in Kentucky with regard to attainment of national air quality standards for the planning and

implementation of the Kentucky SIP.

(d) How the amendment will assist in the effective administration of the statutes: The Kentucky SIP specifies the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in the state depending on the attainment status designation of the area as prescribed in this administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The number and type of entities affected by this administrative regulation depends on the location of the facility since this regulation designates areas of the Commonwealth with regard to attainment of the NAAQS based on ambient air quality data.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will not have to take any action to comply directly with this administrative regulation. However, and entity may be required to meet additional requirements established in other administrative regulations due to the attainment status designation assigned to them in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost associated with the proposed amendment to this administrative regulation as it updates the attainment status designations to be consistent with federal regulations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with standards set for the by other regulations due to the designations in this administrative regulation will ensure entities are complying with the requirements of the Kentucky SIP to protect human health and the environment.

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

(a) Initially: The Cabinet will not incur any additional costs for the implementation of the proposed amendment to this administrative regulation.

(b) On a continuing basis: The Cabinet will not incur any additional costs for the implementation of the proposed amendment to this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Cabinet's current operating budget will be used to implement and enforce the proposed amendment to this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The proposed amendment to this administrative regulation will not establish, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering is not applicable because this regulation only indicates the attainment status designation for an area based on the most recent air quality data.

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 Division for Air Quality will continue to use the attainment status designations in this regulation to determine applicability of other regulations. State and local governments that own or operate affected facilities may

be subject to other regulatory requirements based on the location of the affected facility and the facility's operating parameters.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5), 224.20-110, 42 U.S.C. 7407, 40 C.F.R. 81.318

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 proposed amendment to this administrative regulation will not generate revenue for the first year.

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

(c) How much will it cost to administer this program for the first year? The Division for Air Quality's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The Division for Air Quality's operating budget will be used 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 (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further 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 proposed administrative regulation will not generate cost savings for any regulated entities in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The proposed administrative regulation will not generate cost savings for any regulated entities in subsequent years.

(c) How much will it cost the regulated entities for the first year? There is no known cost to the regulated entities in subsequent years.

(d) How much will it cost the regulated entities for subsequent years? There is no known cost to 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(+/-): There is no known cost savings.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no 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 proposed administrative regulation will not have a major economic impact.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. The federal mandate for this administrative regulation is in 40 C.F.R.81.318 and 42 U.S.C. 7407.

(2) State compliance standards. The administrative regulation designates the status of areas in the Commonwealth associated

with national ambient air quality standards.

(3) Minimum or uniform standards contained in the federal mandate. 42 U.S.C.7407 requires each state with the primary responsibility for assuring air quality within the entire geographic area of the state.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, the administrative regulation does not impose stricter requirements or additional or different responsibilities than those required by the federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards, or additional or different responsibilities or requirements are not imposed.

JUSTICE AND PUBLIC SAFETY CABINET Department of Juvenile Justice (Amendment)

505 KAR 1:110. Intake and orientation~~[Department of Juvenile Justice Policy and Procedures Manual: program services].~~

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, [15A.210, 200.115,]605.150, 635.095, 635.100(7), [635.500,]640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 15A.210, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation establishes the requirements for intake and orientation of a juvenile in a department or contracted detention center, youth development center, or group home[incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program].

Section 1. Intake. (1) A juvenile shall be screened and assessed at intake to assist in developing appropriate services for the juvenile.

(2) A juvenile shall not be discriminated against on the basis of race, color, sex, disability, age, national origin, religion, sexual orientation, gender identity, genetic information, political affiliation, or veteran status.

(3) A juvenile shall be screened to determine if the juvenile is in crisis and requires referral to a mental health professional pursuant to KRS 15A.305(8)(a).

Section 2. Juvenile Detention Center Intake. (1) A juvenile shall be informed of the intake and orientation process at the time of intake.

(2) Any medication or prescription for medication brought with the juvenile shall be immediately turned over to the facility health authority or designee for instructions regarding disposition.

Section 3. Screening for Detention Centers, Juvenile Development Centers, and Group Homes. (1) Staff shall provide the individual being screened with a verbal overview of the procedure for intake and orientation.

(2) A juvenile shall have the following screenings:

(a) Initial health;

(b) Ectoparasite; and

(c) Mental health.

(3) A juvenile may have a drug and alcohol screening.

(4) Absent exigent circumstances, screenings shall be conducted by same gendered staff.

(5) Mental Health Screening. Mental health screening shall be completed by staff trained in use of the screening instrument. If a juvenile is determined to have mental health needs, the facility

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health authority shall make the determination of need and make contact as appropriate with a mental health provider for a mental health assessment. The mental health screening shall be completed within twenty-four (24) hours of admission.

Section 4. Risk Assessment Screening. After the initial detention hearing, a juvenile ordered detained in a state-operated detention facility shall be screened using the detention risk assessment instrument to determine eligibility for the alternative detention program.

Section 5. Human Trafficking Screening. A human trafficking screening shall be conducted for a juvenile following completion of the Individual Treatment Plan but no later than thirty (30) days after admission.

Section 6. PREA Screening. The PREA vulnerability assessment shall be completed during intake.

Section 7. Security Threat Group Screening. An STG screening shall be completed during intake.

Section 8. Orientation in Juvenile Detention Centers, YDCs, and Group Homes. (1) A juvenile shall receive orientation in their own language. Material shall either be written or interpreted to ensure understanding of the juvenile's rights and the facility's rules, including grievance procedures, discipline and penalties, and how to access medical and mental health services.

(2) Within twenty-four (24) hours of admission, facility staff shall provide a written handbook of rules and discuss them with the juvenile. If the juvenile handbook is provided electronically, juveniles in isolation shall be provided the information in a written format so that their access to the information is not impeded by their custody status. Receipt of the handbook shall be documented by a statement signed and dated by the juvenile and staff. Staff shall assist the juvenile in understanding the material if a literacy, hearing, or visual impairment issue exists and shall provide interpretation if needed. The orientation information letter to the parent or caregiver shall be in the language of the parent or caregiver if a language barrier exists.

(3) A juvenile shall be provided personal hygiene instruction, personal hygiene products, and a shower upon admission.

(4) A juvenile shall be provided a complete set of clean clothing at admission and daily thereafter, including underwear and socks.

(5) A juvenile shall receive clean, laundered linens.

(6) A juvenile shall be assigned to and given a brief tour of the housing unit.

(7) A juvenile shall receive assistance in notifying the juvenile's family of their admission, registered number, if applicable, and procedures for mail and visiting.

(8) Completion of orientation shall be documented by a signed and dated statement by the juvenile.

Section 9. Orientation Treatment Plan in Group Homes and YDCs. A juvenile's Orientation Treatment Plan shall be written within seven (7) days of admission.

(1) The "Department of Juvenile Justice Policy and Procedures Manual: Program Services", February 11, 2019, is incorporated by reference and includes the following:

300	Definitions (Amended 2/11/19);
300.1	Programs and Services (Amended 11/08/18);
300.2	Correspondence to the Court System (Amended 11/08/18);
301	Intake and Orientation (Amended 2/11/19);
301.1	Youth's Personal Property, Dress Code, and Facility Issued Property (Amended 11/08/18);
301.2	Hair and Grooming (Amended 11/08/18);
302	Individual Treatment Plan and Aftercare Plan (Amended 2/11/19);
303	Treatment Team Composition, Function, and Responsibility (Amended 11/08/18);
306	Track and Level System (Amended 2/11/19);

307	Counseling Services (Amended 2/11/19);
309	Family Engagement (Amended 11/08/18);
310	Family and Community Contacts: Mail, Telephone, and Visitation (Amended 11/08/18);
314	Youth Council (Amended 11/08/18);
315	Use of Non-Governmental Funds and Youth Activity Funds Account (Amended 11/08/18);
316	Youth Allowances and Work Details (Amended 11/08/18);
317	Recreation (Amended 11/08/18);
318	Behavior Management (Amended 11/08/18);
318.1	Graduated Responses, Sanctions, and Incentives (Amended 11/08/18);
318.2	Disciplinary Review (Amended 11/08/18);
319	Staff Requirements for the Supervision of Youth (Amended 11/08/18);
319.1	Facility Capacities (Amended 11/08/18);
320	Transportation of Youth (Amended 11/08/18);
321	Incident Reporting (Amended 2/11/19);
322	Drug Screening and Testing (Amended 11/08/18);
323	Isolation (Amended 11/08/18);
324	Restraints (Amended 2/11/19);
325	Searches (Amended 11/08/18);
326	Contraband, Seizure, and Chain of Custody (Amended 2/11/19);
327	Escape and Absent Without Leave (Amended 11/08/18);
328	Individual Client Records (Amended 11/08/18);
329	Progress Notes (Amended 11/08/18);
330	Log and Shift Reports (Amended 11/08/18);
331	Grievance Procedure (Amended 11/08/18);
332	Authorized Leave: Day Releases and Furloughs; Supervised Off-grounds Activities (Amended 11/08/18);
334	Youth Development Centers: Educational and Vocational Programming, Assessment, and Transition (Amended 11/08/18);
334.2	Group Homes: Educational Services (Amended 11/08/18);
335	Youth Development Center Educational and Vocational Records (Amended 11/08/18);
339	Youth Development Center Instructional Staffing (Amended 2/11/19);
341	Youth Development Center Evaluation of Integrated Educational and Vocational Plan (Amended 11/08/18);
343	Technical Education Safety (Amended 2/11/19);
344	Library Services (Amended 11/08/18);
345	Religious Programs (Amended 11/08/18);
346.1	Youthful Offenders (Amended 11/08/18);
347.1	Educational and Meritorious Good Time Credit for Youthful Offenders (Amended 2/11/19);
351	Youthful Offender Parole (Amended 11/08/18);
352	Youthful Offender Transfer (Amended 11/08/18);
354	Sentence Expiration Date and Parole Release for Youthful Offenders (Added 2/11/19);
360	Revocation Program Admissions (Added 11/08/18); and
361	Revocation Program Processes (Added 11/08/18).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m.]

VICKI REED, Commissioner

APPROVED BY AGENCY: May 19, 2023

FILED WITH LRC: May 19, 2023 at 12:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2023, 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 August 31, 2023. 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 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 administrative regulation establishes the requirements for intake and orientation of a juvenile in a department or contracted detention center, youth development center, or group home.

(b) The necessity of this administrative regulation: This administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 for administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 15A.305, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides guidance concerning intake and orientation of juveniles.

(2) If 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 sets intake and orientation requirements in the regulation and deletes the policy manual involving these topics and others from incorporation by reference.

(b) The necessity of the amendment to this administrative regulation: The amendment provides the intake and orientation requirements in the regulation for easy reference.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 15A.305, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides the intake and orientation requirements in the regulation for easy reference.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 632 DJJ employees, 348 juveniles, and their families.

(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 facilities will need to comply with the intake and orientation requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that 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 department.

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

(a) Initially: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of compliance is unknown, but it is not anticipated that 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: DJJ 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: An increase in funding is not anticipated.

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065, 15A.0652, 15A.160, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

(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.

(a) How much 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 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? This administrative regulation will not create any revenue.

(c) How much will it cost to administer this program for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost to administer this program for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation is not anticipated to generate any cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation is not anticipated to generate any cost savings.

(c) How much will it cost the regulated entities for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost the regulated entities for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current

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)] A major economic impact to the agency is not anticipated.

EDUCATION AND LABOR CABINET
Kentucky Board of Education
Department of Education
(Amendment)

702 KAR 7:065. Designation of agent to manage middle and high school interscholastic athletics.

RELATES TO: KRS 61.805 - 61.850, 156.070(2), 160.380, 160.445, 20 U.S.C. 1681

STATUTORY AUTHORITY: KRS 156.070(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(1) requires the Kentucky Board of Education to manage and control the common schools, including interscholastic athletics in the schools. KRS 156.070(2) authorizes the board to designate an agency to manage athletics. This administrative regulation designates an agent for middle and high school athletics; establishes the financial planning and review processes for the agent; and incorporates by reference the bylaws, procedures, and rules of the agent.

Section 1. Definitions. (1) "Contact Drill" means that drills are run at Level 3, Level 4, or Level 5.

(2) "KBE" means Kentucky Board of Education.

(3) "KHSAA" means Kentucky High School Athletics Association.

(4) "Level 0" or "air" means that players run a drill unopposed without contact.

(5) "Level 1" or "bags" means that a drill is run with a bag or against another soft contact surface.

(6) "Level 2" or "control" means that:

(a) A drill is run at an assigned speed until the moment of contact;

(b) One (1) player is predetermined the winner by the coach;

(c) Contact remains above the waist; and

(d) Players stay on their feet.

(7) "Level 3" or "Control to Ground" means that:

(a) A drill is run at an assigned non-competitive speed or with players pre-engaged;

(b) There is a pre-determined winner; and

(c) Players are allowed to take their opponent to the ground in a controlled manner.

(8) "Level 4" or "thud" means that:

(a) A drill is run at a competitive speed through the moment of contact;

(b) There is no predetermined winner;

(c) Contact is above the waist;

(d) Players stay on their feet; and

(e) A quick whistle ends the drill.

(9) "Level 5" or "live" means that a drill is run at a competitive speed in game-like conditions.

(10) "Non-Contact Drill" means that drills are run at Level 0, Level 1, or Level 2.

(11) "OCR" means the United States Department of Education, Office for Civil Rights.

Section 2. The KHSAA shall be the Kentucky Board of Education's agent to manage interscholastic athletics at the middle and high school level in the common schools and private schools desiring to associate with KHSAA or to compete with a common school.

Section 3. To remain eligible to maintain the designation as the agent to manage interscholastic high school athletics, the KHSAA shall:

(1) Accept four (4) at-large members appointed by the Kentucky Board of Education to its high school Board of Control;

(2) Sponsor an annual meeting of its member high schools;

(3) Provide for each member high school to have a vote on the KHSAA Constitution and bylaw changes submitted for consideration;

(4) Provide for high school regional postseason tournament net revenues to be distributed to the member high schools in that region participating in that sport, utilizing a share approach determined by the high schools within that region playing that sport;

(5) Provide for students desiring to participate at the high school level (regardless of the level of play) to be enrolled in at least grade seven (7);

(6) Require its governing body to annually establish goals and objectives for its commissioner and perform a self-assessment and submit the results annually to the KBE by December 31;

(7) Advise the Department of Education of all legal action brought against the KHSAA;

(8) Permit a board of control member to serve a maximum of two (2) consecutive four (4) year terms with no region represented for more than eight (8) consecutive years;

(9) Employ a commissioner and evaluate that person's performance annually by October 31, and establish all staff positions upon recommendation of the commissioner;

(10) Permit the commissioner to employ other personnel necessary to perform the staff responsibilities;

(11) Permit the Board of Control to assess fines on a member high school;

(12) Utilize a trained independent hearing officer instead of an eligibility committee for a high school athletic eligibility appeal;

(13) Establish a philosophical statement of principles to use as a guide in a high school eligibility case;

(14) Conduct continual cycles of field audits of the association's entire high school membership, which provides that each high school is audited regarding each school's compliance with 20 U.S.C. Section 1681 (Title IX) and submit annual summary reports, including the highlighting of any potential deficiencies in OCR compliance to the Kentucky Board of Education;

(15) As a condition precedent to high school membership, require each member high school and superintendent to annually submit a written certification of compliance with 20 U.S.C. Section 1681 (Title IX);

(16) Conduct all meetings related to high school athletics in accordance with KRS 61.805 through 61.850;

(17) Provide written reports of any investigations into possible violations of statute, administrative regulation, KHSAA Constitution, KHSAA Bylaws, or other rules governing the conduct of high school interscholastic athletics conducted by KHSAA or their designees to the superintendent and principal of the involved school district and school before being made public;

(18) Not punish or sanction, in any manner, a school, student, coach, or administrator for allowing a student to play in an athletic contest or practice with the team during a time when an order of a court of competent jurisdiction permits the student to participate or otherwise stays or enjoins enforcement of a KHSAA final decision on eligibility; [and]

(19) Require any student enrolled initially in grade seven (7) through twelve (12) who is repeating a grade for any reason, to be ineligible, during the school year that the grade is repeated, to compete in an interscholastic athletics competition at any level; and

(20) Produce a public report(s) of member schools' compliance with submitting the required member school application and the

required training aspects of KRS 158.162 and KRS 160.445 regarding emergency and cardiac action plans related to interscholastic athletics.

Section 4. To remain eligible to maintain the designation as the agent to manage interscholastic athletics at the middle school level, the KHSAA shall implement the following requirements for all participants in middle school interscholastic athletics, distribute these requirements to all middle schools, and publish via the KHSAA Web site:

(1) Require that these provisions apply to all middle school interscholastic athletics. The following indicates that a team is representative of a school and classified as middle school athletics:

(a) The contest, event, or tournament is sponsored by a school or combined group of schools;

(b) Competitors wear a school-issued uniform;

(c) The contest, event, or tournament is sponsored by an outside entity as a school entry event, which is advertised or promoted as a school event, whether or not an entry fee is required;

(d) A school entity pays an entry fee, for the student or team, including payment by booster organizations;

(e) A school representative accompanies the student-athlete or transports the student-athlete to the contest, event, or tournament;

(f) A designated or hired member of a school coaching staff, whether paid or unpaid, is present and offering instruction, advice, evaluation, or refinement of skills or exercising other duties defined as coaching within the sport rules;

(g) Transportation to or from the contest, event, or tournament utilizes school provided or approved transportation;

(h) Competitors in the contest, event, or tournament wear apparel identifying them by the name of the school, including the formal name, informal name, or team nickname;

(i) Competitors in the contest, event, or tournament are provided promotional or other resources by the school including school media recognition, signage, and items indicative of school representation;

(j) Competition in a contest, event, or tournament has, in any form, jurisdiction of the local school board or school-based decision-making body, including financial or other approval control; or

(k) Competition in a contest, event, or tournament is covered by any school or school system provided or procured insurance policy;

(2) Require that any head or assistant coach, whether paid or unpaid, desiring to coach interscholastic athletics at the middle school level:

(a) Meet the requirements of KRS 156.070(2)(h)2[156.070(2)(g)2];

(b) Meet the requirements of KRS 160.380(5) and (6); and

(c) Provide to the school documentation of successful completion of a C.P.R. course including the use of an automatic external defibrillator and the first aid training, conducted by an instructor or program approved by a college or university, the American Red Cross, the American Heart Association, or other bona fide accrediting agency that is approved by the KHSAA based upon industry standards. The certification shall be updated as required by the approving agency;

(3) Require adherence to the following items regarding safety, sports medicine, and risk minimization for all interscholastic athletics at the middle school level:

(a) Each student, before trying for a place on a middle school athletic team, shall provide an annual medical examination, in accordance with KRS 156.070(2)(e), and shall use the KHSAA form PPE01, with PPE02 being optional for the health care provider;

(b) All participants at the middle school level shall adhere to all sports medicine and risk minimization policies in use at the high school level that may be supplemented by the school, school district, conference, or association including:

1. Heat index and heat illness programs;
2. Wrestling weight management programs;
3. Concussion and other head injury policies including policies

for minimizing impact exposure and concussion risks;

4. The following football equipment drill work and practice activity limitations:

a. Football contact and non-contact practice shall use the appropriate clothing and equipment for the level of drill, including:

(i) A drill conducted in helmets-only shall be a Level 0, or Level 1;

(ii) A drill conducted in shells (shorts, shoulder pads, and helmets) shall be a non-contact drill; and

(iii) A contact drill shall be conducted in full equipment;

b. Middle school football shall practice a minimum of eleven (11) days before engaging another group or opponent in full contact, using the following minimum schedule:

(i) Five (5) days in helmets;

(ii) Followed by three (3) days in helmets and shoulder pads; and

(iii) Concluding with three (3) days in full equipment practice; and

c. Contact drills shall not be conducted more than twenty-one (21) days before the first regular-season contest;

d. The [the] first regular season interscholastic contest shall not be played before the Saturday preceding week seven (7) of the National Federation of High Schools Standardized Procedure for Numbering Calendar Weeks; and

e. All middle schools shall maintain protective helmets in accordance with manufacturer's warranty guidelines for recertification;

5. The following baseball pitching limitations shall apply to all interscholastic play at the middle school level including scrimmages, regular season, and post season games:

a. The pitch count shall be based on pitches thrown for strikes (including foul balls), balls, balls in play, and outs;

b. Warm-up pitches allowed before each inning, warm-up pitches allowed by the umpire in case of injury or game delay, and plays attempted against the batter-runner or any runner at first, second, or third base shall not count against this limit;

c. A pitcher at any level who reaches the pitch count limit in the middle of an at-bat shall be allowed to finish that hitter;

d. The required calendar rest shall begin on the day following the date on which the game began, or a resumed game began regardless of the conclusion time of the game; and

e. The rest periods shall be based on the following total pitches:

(i) Maximum pitches - eighty-five (85);

(ii) Fifty-six (56) pitches or more - three (3) calendar days rest;

(iii) Thirty-six (36) to fifty-five (55) pitches - two (2) calendar days rest;

(iv) Twenty (20) to thirty-five (35) pitches - one (1) calendar day rest; and

(v) One (1) to nineteen (19) pitches - no mandated rest;

6. Students seeking to play or practice, including scrimmages, regular season, and post season games, in the sport of fastpitch softball, shall be required to wear face protection, commercially manufactured for softball facial protection and worn as intended by the manufacturer, when playing the positions of first base, third base, and pitcher; and

7. Teams participating in middle school athletics as defined by subsection (1) of this section shall use KHSAA licensed officials in the sports of baseball, basketball, field hockey, football, soccer, softball, and volleyball;

(4) Create a permanent Middle School Athletics Advisory Committee. This committee shall:

(a) Report regularly, not less than annually to the Board of Control of the KHSAA with the Board of Control obligated to make a recommendation to the Kentucky Board of Education with respect to annually proposed regulatory changes;

(b) Be composed of no less than three (3) middle school representatives from each Supreme Court district as well as no less than three (3) at large representatives from throughout the state;

(c) Provide an opportunity for nonprofit athletic groups, parents, and others to participate and provide input on the sport, athletic event, or athletes involved in interscholastic activities

through local school districts;

(d) Meet not less than twice annually to review current programs and policies, make recommendations for improvements to and participation in middle school interscholastic activities, as well as any changes in statute, administrative regulation, or policy related to middle school interscholastic athletics, and assist in the development of model guidelines for schools, districts, conferences, and associations to be used in implementing a middle school athletic program; and

(e) Report regularly, not less than annually, to the commissioner of the KHSAA and issue, in conjunction with the commissioner, a formal written report annually to the KBE with recommendations for changes in statute, administrative regulation, or policy;

(5) Require any organization conducting a school-based event at the middle school level to submit the following, which shall be published and listed on the KHSAA Web site:

(a) Annual financial reports of all sanctioned and approved events sponsored by the organization; and

(b) Documentation of financial accountability including verification of federal status and tax documents including an annual IRS Form 990;

(6) Provide notice to the middle schools related to any program conducted by KHSAA related to educating school administrators about the provisions of 20 U.S.C. 1681, Title IX;

(7) Provide educational materials and a mechanism to facilitate the monitoring and tracking capabilities for the middle schools to ensure compliance with the provisions of KRS 160.445 and other requirements for coaches at the middle school level;

(8) Require that any student who turns:

(a) Fifteen (15) years of age before August 1 of the current school year shall not be eligible for interscholastic athletics in Kentucky in competition against students exclusively enrolled in grades eight (8) and below;

(b) Fourteen (14) years of age before August 1 of the current year shall not be eligible for interscholastic athletics in Kentucky in competition against students exclusively enrolled in grades seven (7) and below; and

(c) Thirteen (13) years of age before August 1 of the current school year shall not be eligible for interscholastic athletics in Kentucky in competition against students exclusively enrolled in grades six (6) and below;

(9) Require each school, school district, conference, or association of schools to develop rules and limitations regarding student participation at the middle school level to include:

(a) A defined age limitation for participating students;

(b) A policy regarding the participation of students below grade six (6);

(c) A limitation on practice time before the season in any sport or sport activity which shall not exceed the practice time adopted for play at the high school level;

(d) A limitation on the number of school-based scrimmages and regular season, school based contests in each sport or sport-activity, which shall not include post season contests and shall not exceed the allowable number of contests for that sport or sport-activity at the high school level; and

(e) A limitation on the length of the regular competitive season in each sport or sport-activity, not including any post season activities, which shall not exceed the length for that sport or sport-activity at the high school level;

(10) Conduct all meetings related to middle school athletics in accordance with KRS 61.805 through 61.850;

(11) Issue an annual report to the KBE on the status of interscholastic athletics at the middle school level, including any recommendations for changes in statute, administrative regulation, or policy;

(12) Allow a school or school district to join a conference or association that has developed rules for any particular sport or sport-activity to satisfy the requirements of this administrative regulation; and

(13) The period of June 25 to July 9, inclusive, shall be a dead period for middle school athletics. During the dead period:

(a) Students shall not receive coaching or training from school

personnel, whether salaried or non-salaried;

(b) School facilities, uniforms, nicknames, transportation, or equipment shall not be used;

(c) School funds shall not be expended in support of interscholastic athletics; and

(d) A postseason wrap-up activity, celebration, or recognition event relating to a spring sports team at a school may be held.

Section 5. Financial Planning and Review Requirements. (1) KHSAA shall annually submit the following documents to the KBE by October 31:

(a) Draft budget for the next two (2) fiscal years, including the current year;

(b) End-of-year budget status report for the previous fiscal year;

(c) Revisions to the KHSAA Strategic Plan as a result of an annual review of the plan by the KHSAA governing body;

(d) A summary report of operations including summaries of financial, legal, and administrative actions taken and other items ongoing within KHSAA. This report shall also include a summary of items affecting:

1. Athletic appeals and their disposition, including the name of the individual, grade, school, and the action taken by KHSAA;

2. Eligibility rules;

3. Duties of school officials;

4. Contests and contest limitations;

5. Requirements for officials and coaches; and

6. Results of a biennial review of its bylaws that results in a recommendation for a change, directing any proposals for change in association rules to be considered for a vote by the member schools at the next legislative opportunity; and

(e) A review of all items which have been submitted to the membership for approval through the processes established in the KHSAA Constitution and the result of the voting on those issues.

(2) The KHSAA shall annually submit at the next meeting of the Kentucky Board of Education following receipt and adoption by the Board of Control, audited financial statements with the KHSAA Commissioner's letter addressing exceptions or notes contained in management correspondence if any.

Section 6. Forms. The forms incorporated by reference in this administrative regulation shall be filed:

(1) Using the paper form; or

(2) Using the electronic forms found on the Kentucky High School Athletic Association Web site at www.khsaa.org.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "KHSAA Constitution", 7/2021;

(b) "KHSAA Bylaws", 7/2023[7/2024];

(c) "KHSAA Due Process Procedure", 7/2023[7/2024];

(d) "KHSAA Board of Control and Officials Division Policies", 7/2023[7/2024];

(e) KHSAA Form BA101- Baseball Pitching Limitation", 6/2016;

(f) KHSAA Form GE01, "Application for Membership", 7/2023[5/2020];

(g) KHSAA Form GE04, "Athletic Participation Form, Parental and Student Consent and Release for High School Level (grades 9 - 12) Participation", 5/2023[7/2020];

(h) KHSAA Form DP02, "Request for Statutory Waiver of Bylaw 2", 6/2018;

(i) KHSAA Form DP06, "Application for Athletic Eligibility for Domestic Students", 7/2023[7/2020];

(j) KHSAA Form DP07, "Application for Athletic Eligibility for Non-Domestic Students [having J-1 or F-1 Status]", 07/2023[7/2020];

(k) [KHSAA Form DP08, "Application for Non U.S. Student Athletic Eligibility for Students Not having J-1/F-1 Status", 7/2020;

(l) KHSAA Form DP16, "Request for Waiver of 20 Day Notice", 6/2018;

(m) KHSAA Form DP17, "Add. Info for Appeal", 6/2018;

(n) KHSAA Form DP18 "Waiver – 15 Day Exceptions", 6/2018;

~~(n)[(e)] "KHSAA Form GE14- Contract for Athletic Contests", 7/2020; and~~

~~(o)[(p)] "KHSAA Form GE19-Title IX Procedures Verification", 5/2011;~~

~~(p)[(q)] KHSAA Form GE20, "Heat Index Measurement and Record", 4/2014[;]~~

~~(r) KHSAA Form PPE01/Physician Clearance, "PPE01-Physician Clearance Form (Grades 6-12)", 7/2020;~~

~~(s) KHSAA Form PPE02/Physical Exam, "PPE02-Physical Exam Form (Grades 6-12)", 7/2021;~~

~~(t) KHSAA Form PPE/Supplemental, "PPE-Physical Exam History Supplemental Form for Athletes With Special Needs (Grades 6-12)", 7/2019; and~~

~~(u) "KHSAA Form MS01- Athletic Participation Parental and Student Consent and Release for Middle School (grades 5-8) Participation", 7/2020[.]~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Legal Services, Department of Education, 5th Floor, 300 Sower Blvd, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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

JASON GLASS, Commissioner

LU YOUNG, Chairperson

APPROVED BY AGENCY: June 13, 2023

FILED WITH LRC: June 14, 2023 at 12:35 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on August 30, 2023, at 10am in the State Board Room, 5th Floor, 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023.

CONTACT PERSON: Todd Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 156.070 requires the Kentucky Board of Education (KBE) to manage and control the common schools, including interscholastic athletics in the schools, and authorizes the KBE to designate an agency to manage athletics. This regulation designates the Kentucky High School Athletic Association (KHSAA) as the agent to manage high school and middle school interscholastic athletics, and incorporates by reference the bylaws, procedures and rules governing interscholastic sports.

(b) The necessity of this administrative regulation: This regulation is necessary to designate the agency to provide the day-to-day management activities of interscholastic athletics in Kentucky; to set forth the financial, planning and review processes governing the agent; and to incorporate by reference the bylaws, procedures and rules of the agency.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation designates the agency to manage interscholastic athletics, as authorized by the authorizing statute, and outlines the conditions under which this authority is granted.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It designates the KHSAA as the agent to manage interscholastic athletics in the schools and districts at the high school and middle school levels, and publishes changes in bylaws, procedures and rules for affected schools and districts.

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

(a) How the amendment will change this existing administrative regulation: These amendments make changes to the documents incorporated by reference, including the bylaws, to make the rule compliant with the provisions of recent legislation. Specifically, recent legislation addressed Name, Image, and Likeness ("NIL"), athletic eligibility of non-resident district students, and gender restricted participation. Changes were also made as a result of the recent Annual Meeting of Member Schools where they voted to remove certain restrictions established in Bylaw 9 for students in Basketball at the beginning of the school year. Finally, additional changes were made to update policies and other documents according to recent board action.

(b) The necessity of the amendment to this administrative regulation: Pursuant to the KHSAA Constitution, which is incorporated by reference in this regulation, the members are required to have an annual meeting to discuss and recommend any needed changes to the Constitution and Bylaws. While they are not required to make changes to the Constitution and Bylaws, substantive changes must be made through this process. This amendment incorporates changes approved at the annual meeting of the Delegate Assembly. This amendment also is necessary to designate the KHSAA as the agent to manage interscholastic athletics at the high school and middle school level.

(c) How the amendment conforms to the content of the authorizing statutes: The statute authorizes the KBE to designate an agency to manage interscholastic athletics in the common schools. The regulation designates the KHSAA as that agent at both the high school and middle school levels, and incorporates by reference the KHSAA Handbook, which consists of the KHSAA Constitution, Bylaws, Due Process Procedure, and Board of Control Policies to provide rules and guidance to the member schools and districts governing sporting events. The amendments in the Bylaws are made annually, according to the process outlined in the Constitution, and reflect input given by member schools and districts on changes that need to be made to provide a sounder structure of governance.

(d) How the amendment will assist in the effective administration of the statutes: See (c) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 171 School Districts; students participating in interscholastic athletics

(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:

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be minimal impact because of the nature of the changes to the regulation. There are requirements that continue to be placed on schools and coaching personnel. However, the training required to meet these requirements will be provided at no costs to the schools, administrators, or the coaching personnel resulting in a safer and more complete education-based athletic experience for the Commonwealth's student-athletes.

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

(a) Initially: Minimal

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the

implementation and enforcement of this administrative regulation: KHSAA is funded through membership dues, as well as from gate receipts and sponsorships related to the various state championships.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts, the Department of Education, and the Kentucky High School Athletic Association.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.070.

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

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

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

(c) How much will it cost to administer this program for the first year? The costs associated to the KHSAA in administering this program for the first year are minimal.

(d) How much will it cost to administer this program for subsequent years? The costs associated to the KHSAA in administering this program in subsequent years are minimal.

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

Revenues (+/-): None

Expenditures (+/-): Minimal

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? Minimal to none.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Minimal to none.

(c) How much will it cost the regulated entities for the first year? There should be little to no additional costs associated for 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 (+/-): None

Expenditures (+/-): None over current expenditures.

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 impact as defined above.

CABINET FOR HEALTH AND FAMILY SERVICES Office of Inspector General Division of Certificate of Need (Amendment)

900 KAR 6:080. Certificate of Need emergency circumstances.

RELATES TO: KRS 216B.015, 216B.020, 216B.061, 216B.990
STATUTORY AUTHORITY: KRS 194A.030(1)(c)4., 216B.040(2)(a)1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes the guidelines for alleviating an emergency circumstance for the orderly administration of the Certificate of Need Program.

Section 1. Definitions.

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

(2) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Office of Inspector General, Division of Certificate of Need Web site at <https://chfs.ky.gov/agencies/os/oig/dcn>.

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

(4) "Emergency circumstance" means a situation that poses an imminent threat to the life, health, or safety of a citizen of the commonwealth, including a situation in which a ground ambulance provider ceases to provide continuous services in its geographic service area in accordance with 202 KAR 7:555, Section 4.

(5) "Office of Inspector General" means the office within the Cabinet for Health and Family Services that is responsible for licensing and regulatory functions of health facilities and services.

(6) "Public notice" means notice given through:

(a) The Web site of the Office of Inspector General, Division of Certificate of Need at <https://chfs.ky.gov/agencies/os/oig/dcn>; or

(b) The cabinet's Certificate of Need Newsletter.

(7) "Service area" means county unless otherwise specified in the state health plan.

(8) "State Health Plan" is defined by KRS 216B.015(28) and is incorporated by reference in 900 KAR 5:020.

Section 2. Emergency Circumstances.

(1) If an emergency circumstance arises, a person may proceed to alleviate the emergency without first obtaining a certificate of need if:

(a) The person is licensed by the Office of the Inspector General or the Kentucky Board of Emergency Medical Services to provide the same or similar services necessary to alleviate the emergency;

(b) The Office of Inspector General, Division of Certificate of Need, is notified in writing within five (5) days of the commencement of the provision of the service required to alleviate the emergency; and

(c) The Office of Inspector General, Division of Certificate of Need, acknowledges in writing that it recognizes that an emergency does exist.

(2) The notice to the Office of Inspector General, Division of Certificate of Need, shall be accompanied by an affidavit and other documentation from the person proposing to provide emergency services that shall contain the following information:

(a) A detailed description of the emergency that shall include at least the following information:

1. a. A description of health care services that will be provided to the person or persons to whom the services will be provided, including proof of eligibility for the service; or

b. An attestation from a county government that it intends to seek a temporary Class I hardship license from the Kentucky

Board of Emergency Medical Services pursuant to 202 KAR 7:555, Section 5:

2. A list of the providers in the service area licensed to provide the services that will be provided during the emergency, unless the situation involves a previously licensed ground ambulance provider that ceases to provide continuous services in its geographic service area; and

3. Proof that:

a. Other providers licensed in the service area to provide the service are aware of the need for the service to be provided to the person and have refused or are unable to provide the service; ~~or~~

b. Circumstances exist under which the transfer of a patient to another provider licensed in the service area to provide the service would present an unacceptable risk to a patient's life, health, or safety; or

c. A previously licensed ground ambulance provider ceases to provide continuous services in its geographic service area;

(b) The steps taken to alleviate the emergency;

(c) The location or geographic service area where the emergency service is being provided; and

(d) The expected duration of the emergency.

(3) The Office of Inspector General, Division of Certificate of Need, may request additional information necessary to make its determination from the person proposing to provide emergency services before it acknowledges that an emergency circumstance does exist.

(4) Except for a temporary Class I hardship license issued under 202 KAR 7:555, Section 5, if the provision of service to meet the emergency circumstance is required to continue beyond sixty (60) days from the date that the notice is filed with the cabinet, the person providing the emergency service shall file the appropriate application for a certificate of need, which is incorporated by reference in 900 KAR 6:055, for the next appropriate public notice pursuant to 900 KAR 6:060. Failure to submit an application to the Office of Inspector General, Division of Certificate of Need, shall result in the rescission of the emergency acknowledgement and generate notification to the Office of Inspector General, Division of Health Care.

(5) The person providing the emergency service may continue to alleviate the emergency circumstances without a certificate of need until:

(a) The emergency circumstance ceases to exist; ~~or~~

(b) The cabinet issues a final decision to approve or disapprove the application for certificate of need; or

(c) Expiration of the temporary Class I hardship license issued under 202 KAR 7:555, Section 5.

(6) The person providing the emergency service shall notify the Office of Inspector General, Division of Certificate of Need, within ten (10) days of the date the emergency circumstance ceases and emergency services are no longer required.

ADAM MATHER, Inspector General

CARRIE BANAHAN, Deputy Secretary

APPROVED BY AGENCY: May 10, 2023

FILED WITH LRC: May 12, 2023 at 3:54 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2023, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by August 14, 2023, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2023. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8),

copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kara Daniel; Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process for addressing emergency circumstances as part of the certificate of need process.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.040(2)(a).1., which requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to establish the certificate of need review procedures, including applications, notice, review for completeness, and review cycle timetables.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.040 by establishing procedures for the certificate of need process.

(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 review procedures for the certificate of need process

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

(a) How the amendment will change this existing administrative regulation: This amendment provides the cabinet with a mechanism that will allow a county to alleviate an emergency circumstance without first obtaining a certificate of need if continuous ambulance services have ceased in the area and the county seeks a temporary Class I hardship license from the Kentucky Board of Emergency Medical Services (KBEMS).

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide the cabinet with a mechanism to allow a county to alleviate an emergency circumstance without first obtaining a certificate of need in a county or counties that would otherwise be left without any Class I ambulance service.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 216B.040 because it establishes procedures for the certificate of need process.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: A county or counties in which ground ambulance services have ceased will be affected by this amendment, which is intended to minimize interruptions in continuous ambulance services.

(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: Counties seeking a temporary Class I hardship license from KBEMS must comply with the procedures set forth in this administrative regulation in order to begin providing services without first obtaining a certificate of need if an emergency circumstance exists.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in

question (3): Counties issued a temporary Class I hardship license by KBEMS under 202 KAR 7:555 may incur costs by providing Class I ambulance services or contracting with a Class I ambulance service. However, counties will not incur any costs under this amendment to 900 KAR 6:080.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky's citizens will benefit from counties being able to provide ambulance services under a temporary Class I hardship license after a Class I agency that previously served the county or counties has surrendered its license or had its license suspended by KBEMS.

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

(a) Initially: There are no additional costs to the Office of Inspector General for implementation of this amendment.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds and agency monies are used to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities authorized to provide services to alleviate an emergency without first obtaining a certificate of need.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Cabinet for Health and Family Services, Office of Inspector General, and any county that seeks to provide ambulance services without a certificate of need due to emergency circumstances.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(1)(c)4. and 216B.040(2)(a)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 amendment will not generate additional revenue for state or local government.

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

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

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

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

Revenues (+/-): See response above.

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

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation will not generate cost savings for regulated entities during the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation will not generate cost savings for regulated entities during subsequent years.

(c) How much will it cost the regulated entities for the first year? This administrative regulation imposes no additional costs on regulated entities.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation imposes no additional costs on regulated entities during 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 amendment is not expected to have a major economic impact on the regulated entities.

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Health Care

(Amendment)

902 KAR 20:300. Operation and services; nursing facilities.

RELATES TO: KRS 194A.705(2)(c), 209.030(2)-(4), 209.032, 216.510-216.525, 216.532, 216.535, 216.540, 216.543, 216.545, 216.547, 216.785-216.793, 42 C.F.R. 483.1-483.95

STATUTORY AUTHORITY: KRS 216B.042

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. This administrative regulation establishes minimum licensure requirements for the operation of and services provided by nursing facilities.

Section 1. Scope of Operations and Licensure.

(1) A nursing facility licensed under this administrative regulation shall comply with federal, state, and local laws and regulations pertaining to the operation of the facility, including compliance with the laws and regulations specified in this subsection.

(a) A nursing facility shall comply with the requirements of 42 C.F.R. 483.1-483.95.

(b) A nursing facility shall not be operated by or employ any person who is listed on the:

1. Nurse aide abuse registry pursuant to KRS 216.532; or
2. Caregiver misconduct registry established by KRS 209.032 and 922 KAR 5:120.

(c) A nursing facility shall comply with the preemployment criminal background check requirements of KRS 216.785 - 216.793.

(d) A nursing facility shall comply with the tuberculosis (TB) testing requirements established by:

1. 902 KAR 20:200; and
2. 902 KAR 20:205;

(e) A nursing facility shall ensure that the rights of residents are protected in accordance with KRS 216.515 - 216.520.

(f) A nursing facility shall conspicuously display the posters required by KRS 216.525 that detail how an individual may make a written or oral complaint to the cabinet.

(g) A nursing facility shall provide the information required by KRS 216.535(3) upon admission of a nursing facility resident.

(h) A nursing facility shall comply with the requirements for access to the facility pursuant to KRS 216.540(2) - (5).

(i) A nursing facility shall comply with the posting requirements of KRS 216.543.

(j) Upon admission, a nursing facility shall provide a copy of the statement required by KRS 216.545(2) to the resident, resident's family member, or guardian.

(k) A nursing facility shall comply with the requirements for public inspection of the information and documents identified in KRS 216.547(1).

(l) A nursing facility shall comply with the license procedures and fee schedule established by 902 KAR 20:008.

(m) A nursing facility shall maintain written policies that assure the reporting of cases of abuse, neglect, or exploitation of adults pursuant to KRS 209.030(2) - (4).

(n) A nursing facility may allow an unlicensed staff person to administer medication in accordance with KRS 194A.705(2)(c) and 201 KAR 20:700 as follows:

1. Medication administration is delegated to the unlicensed staff person by an available nurse;

2. If administration of oral or topical medication is delegated, the unlicensed staff person shall have a:

a. Certified medication aide I credential from a training and skills competency evaluation program approved by the Kentucky Board of Nursing (KBN); or

b. Kentucky medication aide credential from the Kentucky Community and Technical College System (KCTCS); and

3. If administration of a preloaded insulin injection is delegated in addition to oral or topical medication, the unlicensed staff person shall have a certified medication aide II credential from a training and skills competency evaluation program approved by KBN.

(2) A nursing facility may participate in the Kentucky National Background Check Program established by 906 KAR 1:190 to satisfy the background check requirements of subsection (1)(b) and (c) of this section.

ADAM MATHER, Inspector General

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: May 26, 2023

FILED WITH LRC: June 7, 2023 at 2:35 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2023, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by August 14, 2023, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2023. 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, Kara Daniel; Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum licensure requirements for the operation of and services provided by nursing facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.042, which requires the cabinet to promulgate administrative regulations necessary for the proper administration of the licensure function, including licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 by establishing the minimum licensure requirements for the operation of and services provided by nursing facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the minimum licensure requirements for the operation of and services provided by nursing facilities.

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

(a) How the amendment will change this existing administrative regulation: This amendment requires unlicensed staff who administer medications to nursing facility residents under the delegation of a nurse to be a certified medication aide I or Kentucky medication aide, or be a certified medication aide II.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to align with the 2023 passage of SB 110, which amended KRS 194A.705(2)(c) to require all long-term care facilities that provide basic health and health-related services or dementia care services to ensure that unlicensed staff who administer oral or topical medications, or preloaded injectable insulin to residents under the delegation of a nurse to have successfully completed a medication aide training and skills competency evaluation program approved by the Kentucky Board of Nursing (KBN).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 194A.705(2)(c) because the statute applies to all long-term care facilities, including nursing facilities.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of KRS 194A.705(2)(c) because the statute applies to all long-term care facilities, including nursing facilities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects the 290 licensed nursing facilities 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: Nursing facilities must ensure that unlicensed staff who administer oral or topical medications to residents under the delegation of a nurse be a certified medication aide I or Kentucky medication aide, or be a certified medication aide II to administer preloaded injectable insulin to residents.

(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 to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Most licensed nursing facilities use certified medication aides to administer medications under the delegation of a nurse. In addition, it is important to stress that the use of properly trained and competent medication aides leads to fewer

errors with drug use and medication administration, thereby enhancing liability protections for the facility and helping ensure fewer negative outcomes for residents.

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

(a) Initially: There are no additional costs to the Office of Inspector General for implementation of this amendment.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of the licensure function is from federal funds 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: No increase in fees or funding is necessary to implement this amendment.

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all 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 administrative regulation impacts the Cabinet for Health and Family Services, Office of Inspector General, and licensed nursing facilities.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.705(2)(c) and 216B.042.

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

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

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

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

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

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

Revenues (+/-): See response above.

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

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation will not generate cost savings for regulated entities during the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation will not generate cost savings for regulated

entities during subsequent years.

(c) How much will it cost the regulated entities for the first year? This administrative regulation imposes no additional costs on regulated entities.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation imposes no additional costs on regulated entities during 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 amendment is not expected to have a major economic impact on the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 C.F.R. 483.1-483.95

(2) State compliance standards. KRS 216B.042

(3) Minimum or uniform standards contained in the federal mandate. 42 C.F.R. 483.1-483.95 establishes the Federal requirements for participation in Medicare and Medicaid to ensure the health and safety of individuals to whom services are furnished in nursing facilities.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The existing language of this regulation requires Kentucky-licensed nursing facilities to comply with the consolidated Medicare and Medicaid requirements for participation for long-term care facilities (42 C.F.R. 483.1-483.95); requires compliance with the abuse registry checks required by KRS 216.532 and KRS 209.032; requires compliance with the criminal background checks required by KRS 216.785 – 216.793; requires compliance with the tuberculosis (TB) testing requirements established by 902 KAR 20:200 and 902 KAR 20:205; requires facilities to ensure that residents rights are protected in accordance with KRS 216.515 – 216.520; requires facilities to conspicuously display posters required by KRS 216.525; requires facilities to provide information required by KRS 216.535(3); requires compliance with the requirements for access to the facility pursuant to KRS 216.540(2) – (5); requires compliance with the posting requirements of KRS 216.543; requires compliance with the statement required by KRS 215.545(2); requires compliance with the requirements for public inspection of the information and documents identified in KRS 216.547(1); requires compliance with the licensing procedures and fee schedule established by 902 KAR 20:008; and requires compliance with the reporting requirements of KRS 209.030(2) – (4). In accordance with KRS 194A.705(2)(c) and 201 KAR 20:700, this amendment requires nursing facilities to ensure that any unlicensed staff who administer oral or topical medications to residents under the delegation of a nurse be a certified medication aide I or Kentucky medication aide, or be a certified medication aide II to administer preloaded injectable insulin to residents.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The additional requirements for nursing facilities are established in state law as identified above.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)

902 KAR 100:019. Standards for protection against radiation.

RELATES TO: KRS 211.842-211.852, 211.990(4), [40 C.F.R. 20.1001-20.1906, 20.2101-20.2204, 20.2206, Appendixes A, B-20.1001-20.2401, 40 C.F.R. 190, 49 C.F.R. 100-180, 173.403(m), (w), 173.421-173.424]

STATUTORY AUTHORITY: KRS 194A.050(1), [211.090,] 211.844[, 10 C.F.R. 10.1001-20.1906, 20.2101-20.2204, 20.2206, Appendixes A, B-20.1001-20.2401, 40 C.F.R. 190, 49 C.F.R. 100-180, 49 C.F.R. 173.403(m), (w), 173.421-173.424.]

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 operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.844 requires the cabinet [for Health and Family Services] to provide by administrative regulation for the registration [and licensing] of the possession or use of sources of ionizing or electronic product radiation [and the handling and disposal of radioactive waste]. This administrative regulation establishes standards for the protection of the user and general public against radiation exposure and establishes standards for protection against ionizing radiation resulting from activities conducted by persons issued [licenses or] registrations by the cabinet. This administrative regulation establishes standards to control the receipt, possession, use, transfer, and disposal of sources of radiation by a person[, licensee,] or registrant so the total dose to an individual (including doses resulting from registered and unregistered[licensed and unlicensed radioactive material and] radiation sources other than background radiation) shall not exceed the standards for protection against radiation established in this administrative regulation.

Section 1. Radiation Protection Implementation. (1) This administrative regulation shall not limit actions required in order to protect against an immediate danger to public health and safety.

(2) This administrative regulation shall apply to a person [licensed or] registered by the cabinet to receive, possess, use, transfer, or dispose of sources of radiation.

(3) The limits in this administrative regulation shall not apply to doses due to background radiation, exposure of patients to radiation for the purpose of medical diagnosis or therapy, or voluntary participation in medical research programs.

Section 2. Radiation Protection Programs. A person[, licensee,] or registrant shall: (1) Develop, document, and implement a radiation protection program commensurate with the scope and extent of the person's activities and sufficient to ensure compliance with the provisions of this administrative regulation.[:]

(2) Use procedures and engineering controls based upon sound radiation protection principles, to the extent practical, to achieve occupational doses and doses to members of the public that shall be as low as reasonably achievable (ALARA) pursuant to 902 KAR 100:015, Section 2.[:]

(3) Annually review the radiation protection program content and implementation[: and

(4) Establish a constraint on air emissions of radioactive material to the environment, excluding radon-222 and its daughters, to implement the ALARA requirements of subsection (2) of this section and the requirements of Section 10 of this administrative regulation.

(a) Any constraint shall ensure that the highest dose that could be received by a person shall not exceed a dose in excess of ten (10) millirems (0.1 mSv) per year.

(b) A licensee, if required to establish these constraints, shall report any exceedance as provided in Section 40 of this administrative regulation and shall take appropriate corrective action to ensure against recurrence].

Section 3. Occupational Dose Limits for Adults. (1) A person[, licensee,] or registrant shall control the occupational dose to individual adults, except for planned special exposures as established in Section 5[7] of this administrative regulation, to:

(a) An annual limit, which shall be the more limiting of the:

1. Total effective dose equivalent being equal to five (5) rems (0.05 Sv); and

2. Sum of the deep-dose equivalent and the committed dose equivalent to an individual organ or tissue, other than the lens of the eye, being equal to fifty (50) rems ((0.50) Sv); and

(b) The annual limits to the lens of the eye, the skin, and the extremities, which shall be:

1. A lens dose equivalent of fifteen (15) rems (0.15 Sv); and

2. A shallow-dose equivalent of fifty (50) rems (five-tenths (0.50) Sv) to the skin of the whole body or to the skin of an extremity.

(2) Doses received in excess of the annual limits, including doses received during accidents, emergencies, and planned special exposures, shall be subtracted from the limits for planned special exposures that the individual may receive during the current year and during the individual's lifetime as established in Section 5[7](3)(a) and (b) of this administrative regulation.

(3) The assigned deep-dose equivalent and shallow-dose equivalent shall be for the part of the body receiving the highest exposure. The assigned shallow dose equivalent shall be the dose averaged over the contiguous ten (10) square centimeters of skin receiving the highest exposure. If the individual monitoring device was not in the region of highest potential exposure, the deep-dose equivalent, lens dose equivalent, and shallow-dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits.

(4) [Derived air concentration (DAC) and annual limit on intake (ALI) values are established in 40 C.F.R., 20, Appendix B, Table 1, and shall be used to:

(a) Determine the individual's dose as required in Section 34 of this administrative regulation; and

(b) Demonstrate compliance with the occupational dose limits.

(5) In addition to the annual dose limits, the person, licensee, or registrant shall limit the soluble uranium intake by an individual to ten (10) milligrams in a week in consideration of chemical toxicity as established in 40 C.F.R., 20 Appendix B.

(6) A person[, licensee,] or registrant shall reduce the dose that an individual may be allowed to receive in the current year by the amount of occupational dose received while employed by a person as described in Section 20[32] of this administrative regulation.

Section 4. Compliance with[Requirements for] Summation of [External and Internal] Doses from Radiation Producing Machines and Radioactive Materials. A registrant who

[1] If a licensee or registrant is required to monitor for dose received by exposure to both radiation producing machines and radioactive materials[both Section 13(1) and (2) of this administrative regulation, the licensee or registrant] shall demonstrate compliance with the dose limits by following the requirements of 902 KAR Chapter 100.

Section 5. [summing external and internal doses.

(2) If a licensee or registrant is required to monitor only by Section 13(1) or (2) of this administrative regulation, summation shall not be required to demonstrate compliance with the dose limits.

(3) A licensee or registrant may demonstrate compliance with the requirements for summation of external and internal doses by meeting one (1) of the conditions specified in subsection (5) of this section and the conditions in subsections (6) and (7) of this section.

(4) The dose equivalents for the lens of the eye, the skin, and the extremities shall not be included in the summation but shall be subject to separate limits established in Section 3 of this administrative regulation.

(5) If the only intake of radionuclides occurs by inhalation, the total effective dose equivalent limit shall not be exceeded if the sum of the deep-dose equivalent divided by the total effective dose equivalent limit, and one (1) of the following, does not exceed unity:

(a) Sum of the fractions of the inhalation ALI for each radionuclide;

(b) Total number of derived air concentration-hours (DAC-hours) for radionuclides divided by 2,000; or

(c) Sum of the calculated committed effective dose equivalents to significantly irradiated organs or tissues (T) calculated from bioassay data using appropriate biological models and expressed as a fraction of the annual limit.

(6) If the occupationally exposed individual also receives an intake of radionuclides by oral ingestion greater than ten (10) percent of the applicable oral ALI, the licensee or registrant shall account for this intake and include it in demonstrating compliance with the limits.

(7) A licensee or registrant shall evaluate and, to the extent practical, account for intakes through wounds or skin absorption. The intake through intact skin has been included in the calculation of DAC for hydrogen-3 and does not need to be further evaluated.

Section 5. Determination of External Dose from Airborne Radioactive Material.

(1) If determining the dose from airborne radioactive material, a licensee or registrant shall include the contribution to the deep-dose equivalent, lens dose equivalent, and shallow-dose equivalent from external exposure to the radioactive cloud.

(2) If the airborne radioactive material includes radionuclides other than noble gases or the cloud of airborne radioactive material is not relatively uniform, airborne radioactivity measurements and DAC values shall not be used as the primary means to assess the deep-dose equivalent.

(3) The determination of the deep-dose equivalent to an individual shall be based upon measurements using instruments or individual monitoring devices.

Section 6. Determination of Internal Exposure. (1) For purposes of assessing dose used to determine compliance with occupational dose equivalent limits, the licensee or registrant shall, if required by Section 13 of this administrative regulation, take suitable and timely measurements of:

(a) Concentrations of radioactive materials in the air in work areas;

(b) Quantities of radionuclides in the body;

(c) Quantities of radionuclides excreted from the body; or

(d) Combinations of these measurements.

(2) A licensee or registrant shall assume an individual inhales radioactive material at the airborne concentration in which the individual is present, unless respiratory protective equipment is used, as provided in Section 19 of this administrative regulation, or the assessment of intake is based on bioassays.

(3) If specific information on the physical and biochemical properties of the radionuclides taken into the body, or the behavior or material in an individual is known, a licensee or registrant may:

(a) Use the information to calculate the committed effective dose equivalent, and, if used, the licensee or registrant shall document the information in the individual's record;

(b) Upon prior approval by the cabinet, adjust the DAC or ALI values to reflect the actual physical and chemical characteristics of airborne radioactive material (for example, aerosol-size distribution or density); and

(c) Separately assess the contribution of fractional intakes of Class D, W, or Y compounds of a radionuclide, as provided in 10 C.F.R., 20 Appendix A, to the committed effective dose equivalent.

(4) If a licensee or registrant chooses to assess intakes of Class Y material using the measurements provided in subsection (1)(b) or (c) of this section, the licensee or registrant may delay the recording and reporting of the assessments for periods up to seven (7) months, unless otherwise required by Section 39 or 40 of this administrative regulation, in order to permit the licensee or registrant to make additional measurements basic to the

assessments.

(5) If the identity and concentration of radionuclides in a mixture are known, the fraction of the DAC applicable to the mixture for use in calculating DAC-hours shall be the:

(a) Sum of the ratios of the concentration to the appropriate DAC value (D, W, Y) from 10 C.F.R., 20 Appendix B, for radionuclides in the mixture; or

(b) Ratio of the total concentration for radionuclides in the mixture to the most restrictive DAC value for a radionuclide in the mixture.

(6) If the identity of radionuclides in a mixture is known, but the concentration of one (1) or more of the radionuclides in the mixture is not known, the DAC for the mixture shall be the most restrictive DAC of a radionuclide in the mixture.

(7) If a mixture of radionuclides in air exists, a licensee or registrant may disregard certain radionuclides in the mixture if the:

(a) Licensee or registrant uses the total activity of the mixture in demonstrating compliance with the dose limits in Section 3 of this administrative regulation and in complying with the monitoring requirements in Section 13(2) of this administrative regulation;

(b) Concentration of a disregarded radionuclide is less than ten (10) percent of its DAC; and

(c) Sum of these percentages for the disregarded radionuclides in the mixture does not exceed thirty (30) percent.

(8) In order to calculate the committed effective dose equivalent, a licensee or registrant may assume that the inhalation of one (1) ALI or an exposure of 2,000 DAC-hours results in a committed effective dose equivalent of five (5) rems (0.05 Sv) for radionuclides having their ALIs or DACs based on the committed effective dose equivalent.

(a) If the ALI and the associated DAC are determined by the nonstochastic organ dose limit of fifty (50) rems (five-tenths (0.50) Sv), the intake of radionuclides that result in a committed effective dose equivalent of five (5) rems (0.05 Sv) (the stochastic ALI) is listed in parentheses in 10 C.F.R., 20 Appendix B. A licensee or registrant may, as a simplifying assumption, use the stochastic ALIs to determine committed effective dose equivalent.

(b) If a licensee or registrant uses the stochastic ALIs, the licensee or registrant shall also demonstrate that the limit in Section 3(1)(a)2 of this administrative regulation is met.

Section 7. Planned Special Exposures. (1) A [licensee or] registrant may authorize an adult worker to receive doses in addition to, and accounted for separately from the doses received under, the limits specified in Section 3 of this administrative regulation provided each of the following conditions are satisfied:

(a) The [licensee or] registrant authorizes a planned special exposure only in an exceptional situation if alternatives that may avoid the dose estimated to result from the planned special exposure are unavailable or impractical;

(b) The [licensee or] registrant, and employer if the employer is not the [licensee or] registrant, specifically authorize the planned special exposure, in writing, before the exposure occurs; and

(c) Before a planned special exposure, the [licensee or] registrant ensures that the individuals involved are:

1. Informed of the purpose of the planned operation;

2. Informed of the estimated doses and associated potential risks and specific radiation levels or other conditions that may be involved in performing the task; and

3. Instructed in the measures to be taken to keep the dose ALARA considering other risks that may be present.

(2) Prior to permitting an individual to participate in a planned special exposure, a [licensee or] registrant shall ascertain prior doses as required by Section 20(32)(2) of this administrative regulation during the lifetime of the individual for each individual involved.

(3) Subject to Section 3(2) of this administrative regulation, a [licensee or] registrant shall not authorize a planned special exposure that shall cause an individual to receive a dose from planned special exposures and doses in excess of the limits to exceed:

(a) The numerical values of the dose limits in Section 3(1) of this administrative regulation in a year; and

(b) Five (5) times the annual dose limits in Section 3(1) of this administrative regulation during the individual's lifetime.

(4) A ~~[licensee or]~~ registrant shall:

(a) Maintain records of the conduct of a planned special exposure pursuant to Section ~~21~~[33] of this administrative regulation; and

(b) Submit a written report pursuant to Section ~~28~~[44] of this administrative regulation.

(5) A ~~[licensee or]~~ registrant shall record the best estimate of the dose resulting from the planned special exposure in the individual's record and inform the individual, in writing, of the dose within thirty (30) days from the date of the planned special exposure. The dose from planned special exposures shall not be considered in controlling future occupational dose of the individual by Section 3(1) of this administrative regulation but shall be included in evaluations required by subsections (2) and (3) of this section[Section 7(2) and (3) of this administrative regulation].

Section 6[Section 8.] Occupational Dose Limits for Minors. The annual occupational dose limits for minors shall be ten (10) percent of the annual dose limits specified for adult workers in Section 3 of this administrative regulation.

Section 7[Section 9.] Dose Equivalent to an Embryo or Fetus.

(1) A ~~[licensee or]~~ registrant shall ensure that the dose equivalent to an embryo or fetus during the entire pregnancy, due to occupational exposure of a declared pregnant woman, does not exceed five-tenths (0.5) rem (5 mSv). Recordkeeping requirements are established in Section ~~22~~[42] of this administrative regulation.

(2) A ~~[licensee or]~~ registrant shall make efforts to avoid substantial variation above a uniform monthly exposure rate to a declared pregnant woman to satisfy the limit in subsection (1) of this section.

(3) The dose equivalent to an embryo or fetus shall be taken as the sum of:

(a) The deep-dose equivalent to the declared pregnant woman; and

(b) The dose equivalent to the embryo or fetus resulting from radionuclides in the embryo or fetus and radionuclides in the declared pregnant woman.

(4) If the dose equivalent to the embryo or fetus is found to have exceeded five-tenths (0.5) rem (five (5) mSv), or is within 0.05 rem (five-tenths (0.5) mSv) of this dose, by the time the woman declares the pregnancy to a registrant, the~~[licensee or registrant, the licensee or]~~ registrant shall be in compliance with subsection (1) of this section if the additional dose equivalent to the embryo or fetus does not exceed 0.05 rem (five-tenths (0.5) mSv) during the remainder of the pregnancy.

Section 8[Section 10.] Radiation Dose Limits for Individual Members of the Public. (1) A ~~[licensee or]~~ registrant shall conduct operations to ensure that the:

(a) Total effective dose equivalent to individual members of the public from ~~[licensed,]~~ registered, and other operations shall not exceed 0.1 rem (one (1) mSv) in a year, exclusive of the dose contributions from:

1. Background radiation;

2. A medical administration the individual received; and

3. ~~[An exposure to individuals administered radioactive material and released in accordance with 902 KAR 100:072, Section 27;~~

4. Voluntary participation in medical research programs; and

~~[5. The licensee's or registrant's disposal of radioactive material into sanitary sewerage under 902 KAR 100:021, Section 3; and]~~

(b) Dose in an unrestricted area from external sources, exclusive of the dose contributions from patients administered radioactive material and released in accordance with 902 KAR 100:072, Section 27, shall not exceed 0.002 rem (0.02 mSv) in one (1) hour.

(2) If a ~~[licensee or]~~ registrant permits members of the public to have access to controlled areas, the limits for members of the public specified in this section shall apply to those individuals.

(3) A ~~[licensee,]~~ registrant~~[,]~~ or applicant for ~~[a license or]~~ registration may apply for prior authorization to operate up to an annual dose limit for an individual member of the public of five-tenths (0.5) rem (five (5) mSv). The application shall include ~~[the following information]:~~

(a) Demonstration of the need for, and the expected duration of, operations in excess of the limit in subsection (1) of this section;

(b) A ~~[licensee's or]~~ registrant's program to assess and control dose within the five-tenths (0.5) rem (five (5) mSv) annual limit; and

(c) The procedures to be followed to maintain the dose ALARA.

(4) ~~[In addition to the provisions of this administrative regulation, a person, licensee, or registrant subject to the provisions of U.S. Environmental Protection Agency's applicable environmental radiation standards in 40 C.F.R. 190 shall comply with those standards.]~~

(5) The cabinet may impose additional restrictions on radiation levels in unrestricted areas~~[and on the total quantity of radionuclides that a licensee or registrant may release in effluents in order to restrict the collective dose.]~~

(6) ~~In addition to the requirements in subsection (1)(a) of this section, a licensee may permit visitors to an individual who cannot be released under 902 KAR 100:072, Section 27, to receive a radiation dose greater than one tenth (0.1) rem (1 mSv) if:~~

(a) The radiation dose received does not exceed five-tenths (0.5) rem (5 mSv); and

(b) The authorized user, as defined in 902 KAR 100:010, has determined before the visit that it is appropriate].

Section 9[Section 11.] Compliance with Dose Limits for Individual Members of the Public. (1) To demonstrate compliance with the dose limits for individual members of the public in Section ~~8~~[40] of this administrative regulation, a ~~[licensee or]~~ registrant shall make or cause to be made surveys of:

(a) radiation levels in unrestricted and controlled areas; and

(b) Radioactive materials in effluents released to unrestricted and controlled areas].

(2) A ~~[licensee or]~~ registrant shall show compliance with the annual dose limit in Section ~~8~~[40] of this administrative regulation by:

(a) Demonstrating by measurement or calculation that the total effective dose equivalent to the individual likely to receive the highest dose from the registered~~[licensed]~~ operation shall not exceed the annual dose limit; or

(b) Demonstrating that:

1. The annual average concentrations of radioactive material released in gaseous and liquid effluents at the boundary of the restricted area shall not exceed the values specified in 10 C.F.R. 20, Appendix B; and

2. if an individual were continually present in an unrestricted area, the dose from external sources shall not exceed 0.002 rem (0.02 mSv) in an hour and 0.05 rem (five-tenths (0.5) mSv) in a year.

~~[(3) Upon approval from the cabinet, a licensee or registrant may adjust the effluent concentration values in 10 C.F.R., 20 Appendix B, for members of the public, to take into account the actual physical and chemical characteristics of the effluents (for example, aerosol size distribution, solubility, density, radioactive decay equilibrium, or chemical form).]~~

Section 10[Section 12.] Surveys and Monitoring. (1) A ~~[licensee or]~~ registrant shall make or cause to be made, surveys that are:

(a) Necessary for the ~~[licensee or]~~ registrant to comply with the provisions in this administrative regulation; and

(b) Reasonable under the circumstances to evaluate:

1. The magnitude and extent of radiation levels; and

2. ~~[Concentrations or quantities of radioactive material; and~~

3. ~~] The potential radiological hazards.]~~

(2) A ~~[licensee or]~~ registrant shall ensure that instruments and equipment used for quantitative radiation measurements (for example, dose rate~~[and effluent monitoring]~~) are calibrated periodically for the radiation measured.

(3) Personnel dosimeters, except direct and indirect reading pocket ionization chambers and those dosimeters used to measure the dose to the extremities, that require processing to determine the radiation doses used by [licensees or] registrants to comply with Section 3 of this administrative regulation, other applicable provisions of 902 KAR Chapter 100, or conditions specified [in a license], shall be processed and evaluated by a dosimetry processor:

(a) Holding current personnel dosimetry accreditation from the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute of Standards and Technology; and

(b) Approved in this accreditation process for the type of radiation or radiations included in the NVLAP program that most closely approximates the type of radiation or radiations for which the individual wearing the dosimeter is monitored.

Section 11.~~[Section 13.]~~ Conditions Requiring Individual Monitoring of External ~~[and Internal]~~ Occupational Dose. (1) A [licensee or] registrant shall monitor exposures to radiation ~~[and radioactive material]~~ at levels sufficient to demonstrate compliance with the occupational dose limits of this administrative regulation.

(2) At a minimum, the [licensee or] registrant shall monitor occupational exposure to radiation, from [licensed and unlicensed,] registered and unregistered radiation sources under the [licensee's or] registrant's control, and shall supply and require the use of individual monitoring devices by:

(a) Adults likely to receive, in one (1) year from radiation sources external to the body, a dose in excess of ten (10) percent of the limits in Section 3(1) of this administrative regulation;

(b) Minors likely to receive, in one (1) year from sources external to the body, a deep dose equivalent in excess of 0.1 rem (1 mSv), a lens dose equivalent in excess of 0.15 rem (1.5 mSv), or a shallow dose equivalent to the skin or to the extremities in excess of five-tenths (0.5) rem (5 mSv);

(c) Declared pregnant women likely to receive during the entire pregnancy, from radiation sources external to the body, a deep dose equivalent in excess of 0.1 rem (1 mSv). All of the occupational doses in Section 3 continue to be applicable to the declared pregnant worker as long as the embryo or fetus dose limit is not exceeded; and

(d) Individuals entering a high or very high radiation area.

~~[(2) A licensee or registrant shall monitor, pursuant to Section 6 of this administrative regulation, the occupational intake of radioactive material by, and assess the committed effective dose equivalent to:~~

~~(a) Adults likely to receive, in one (1) year, an intake in excess of ten (10) percent of the applicable ALIs in 10 C.F.R., 20 Appendix B;~~

~~(b) Minors likely to receive, in one (1) year, a committed effective dose equivalent in excess of 0.1 rem (1 mSv); and~~

~~(c) Declared pregnant women likely to receive, during the entire pregnancy, a committed effective dose equivalent in excess of 0.1 rem (1 mSv).]~~

Section 12.~~[Section 14.]~~ Control of Access to High Radiation Areas. (1) A [licensee or] registrant shall ensure that each entrance or access point to a high radiation area shall have at least one (1) of the following features:

(a) A control device that, upon entry into the area, shall cause the level of radiation to be reduced below the level an individual may receive a deep-dose equivalent of 0.1 rem (one (1) mSv) in one (1) hour at thirty (30) centimeters from the radiation source or from a surface that the radiation penetrates;

(b) A control device that shall energize a conspicuous visible or audible alarm signal so the individual entering the high radiation area and the supervisor of the activity shall be made aware of the entry; or

(c) Entryways that shall be locked, except during periods that access to the areas is required, with positive control over each individual entry.

(2) In place of the controls required by subsection (1) of this section for a high radiation area, a [licensee or] registrant may substitute continuous direct or electronic surveillance that shall be

capable of preventing unauthorized entry.

(3) A [licensee or] registrant may apply to the cabinet for approval of alternative methods for controlling access to high radiation areas.

(4) A [licensee or] registrant shall establish the controls required by subsections (1) and (3) of this section that shall not prevent individuals from leaving a high radiation area.

~~[(5) Control shall not be required for an entrance or access point to a room or other area that is a high radiation area solely because of the presence of radioactive materials prepared for transport and packaged and labeled in accordance with 49 C.F.R. 100-180 if the packages will not remain in the area longer than three (3) days, and the dose rate at one (1) meter from the external surface of a package will not exceed 0.01 rem (0.1 mSv) per hour.~~

~~(6) Control of entrance or access to rooms or other areas in hospitals shall not be required solely because of the presence of patients containing radioactive material if personnel are in attendance who:~~

~~(a) Take the necessary precautions to prevent the exposure of individuals to radiation or radioactive material in excess of the limits established in this administrative regulation; and~~

~~(b) Operate within the ALARA provisions of the licensee's or registrant's radiation protection program.~~

~~(7) A registrant is not required to control entrance or access to rooms or other areas containing sources of radiation capable of producing a high radiation area as described in this section if the registrant has met the specific requirements for access and control specified in 902 KAR 100:100, 100:115, and 100:155.]~~

Section 13.~~[Section 15.]~~ Control of Access to Very High Radiation Areas. (1) In addition to the provisions in Section ~~12~~¹⁴ of this administrative regulation, a [licensee or] registrant shall institute additional measures to ensure that an individual shall not be able to gain unauthorized or inadvertent access to areas in which radiation levels may be encountered at 500 rads (five (5) grays) or more in one (1) hour at one (1) meter from a radiation source or a surface through which the radiation penetrates.

(2) A registrant shall not be required to control entrance or access to rooms or other areas containing sources of radiation capable of producing a very high radiation area as established in subsection (1) of this section if the registrant has met the specific requirements for access and control specified in 902 KAR ~~100:115, 100:136, 100:137, and 100:155.~~^[400:100, 400:115, and 400:155.]

Section 16. Control of Access to Very High Radiation Areas for Irradiators. (1) This section shall apply to radiation from sources of radiation used in sealed sources in nonself-shielded irradiators.

(2) This section shall not apply to:

(a) Sources of radiation used in teletherapy, radiography, or completely self-shielded irradiators in which the source:

1. Is both stored and operated within the same shielding radiation barrier; and

2. In the designed configuration of the irradiator is always physically inaccessible to an individual and cannot create high levels of radiation in an area that is accessible to an individual; and

(b) Sources from which the radiation shall be incidental to some other use or to nuclear reactor-generated radiation.

(3) Areas where radiation levels may exist in excess of 500 rads (five (5) grays) in one (1) hour at one (1) meter from a source of radiation used to irradiate materials shall meet the following requirements:

(a) An entrance or access point shall be equipped with entry control devices that:

1. Function automatically to prevent an individual from inadvertently entering the area if very high radiation levels exist;

2. Permit deliberate entry into the area only after a control device is actuated that causes the radiation level within the area, from the source of radiation, to be reduced below a level where it is possible for an individual to receive a deep-dose equivalent in excess of 0.1 rem (one (1) mSv) in one (1) hour; and

3. Prevent operation of the source of radiation if the source would produce radiation levels in the area that may result in a deep-dose equivalent to an individual in excess of 0.1 rem (one (1)

mSv) in one (1) hour.

(b) Additional control devices shall be provided so that, upon failure of the entry control devices to function as required by subsection (3)(a) of this section:

1. The radiation level within the area, from the source of radiation, is reduced below a level where it is possible for an individual to receive a deep-dose equivalent in excess of 0.1 rem (one (1) mSv) in one (1) hour; and

2. Conspicuous visible and audible alarm signals shall be generated to make an individual attempting to enter the area aware of the hazard, and at least one (1) other authorized individual who is physically present, familiar with the activity, and prepared to render or summon assistance, aware of the failure of the entry control devices;

(c) A licensee or registrant shall provide control devices so that, upon failure or removal of physical radiation barriers other than the source's shielded storage container:

1. The radiation level from the source of radiation shall be reduced below a level where it is possible for an individual to receive a deep-dose equivalent in excess of 0.1 rem (one (1) mSv) in one (1) hour; and

2. Conspicuous visible and audible alarm signals shall be generated to make potentially affected individuals aware of the hazard, and a licensee, registrant, or at least one (1) other individual who is familiar with the activity and prepared to render or summon assistance, aware of the failure or removal of the physical barrier;

(d) If the shield for the stored source is a liquid, the licensee or registrant shall provide means to:

1. Monitor the integrity of the shield; and

2. Automatically signal loss of adequate shielding;

(e) Physical radiation barriers that comprise permanent structural components, such as walls, that have no credible probability of failure or removal in ordinary circumstances need not meet the requirements of paragraphs (c) and (d) of this subsection;

(f) An area shall be equipped with devices that automatically generate conspicuous visible and audible alarm signals:

1. To alert personnel in the area before the source can be put into operation;

2. In sufficient time for an individual in the area to operate a clearly identified control device, which is installed in the area and can prevent the source from being put into operation;

(g) An area shall be controlled by use of administrative procedures and devices as are necessary to ensure that the area is cleared of personnel prior to use of the source;

(h) An area shall be checked by a radiation measurement to ensure that, prior to the first individual's entry into the area after use of the source of radiation, the radiation level from the source of radiation in the area is below a level where it is possible for an individual to receive a deep-dose equivalent in excess of 0.1 rem (one (1) mSv) in one (1) hour;

(i) The entry control devices required in paragraph (a) of this subsection shall have been tested for proper functioning as follows:

1. Daily prior to initial operation with the source of radiation, unless operations were continued uninterrupted from a previous day;

2. Prior to resumption of operation of the source of radiation after an unintended interruption; and

3. By adherence to a submitted schedule for periodic tests of the entry control and warning systems;

(j) A licensee or registrant shall not conduct operations if control devices are not functioning properly, other than those necessary to place the source of radiation in safe condition or to effect repairs on controls; and

(k) Entry and exit portals used in transporting materials to and from the irradiation area, and not intended for use by individuals, shall be controlled by devices and administrative procedures as are necessary to physically protect and warn against inadvertent entry by an individual through these portals. Exit portals for processed materials shall be equipped to detect and signal the presence of loose radiation sources carried toward an exit to automatically prevent loose radiation sources from being carried out of the area.

(4)(a) Persons holding licenses or registrations, or applicants for licenses or registrations, for radiation sources may apply to the cabinet for approval of the use of alternative safety measures if they:

1. Are governed by the provisions of subsection (3) of this section; and

2. May be used in a variety of positions or in locations, such as open fields or forests, that make it impracticable to comply with provisions of subsection (3) of this section (for example, those for the automatic control of radiation levels).

(b) Alternative safety measures shall provide personnel protection equivalent to those specified in subsection (3) of this section.

(c) At least one (1) of the alternative measures shall include an entry-preventing interlock control, based on a measurement of the radiation, that ensures the absence of high radiation levels before an individual may gain access to the area in which sources of radiation are used.

(5) Entry control devices required by subsections (3) and (4) of this section shall be established in a way that an individual shall not be prevented from leaving the area.

Section 17. Use of Process or Other Engineering Controls. The licensee or registrant shall use, to the extent practicable, process or other engineering controls (such as containment, decontamination, or ventilation) to control the concentration of radioactive material in air.

Section 18. Use of Other Controls. (1) If it is not practicable to apply process or other engineering controls to control the concentrations of radioactive material in air to values below those that define an airborne radioactivity area, a licensee or registrant shall, consistent with maintaining the total effective dose equivalent ALARA, increase monitoring and limit intakes by one (1) or more of the following means:

(a) Control of access;

(b) Limitation of exposure times;

(c) Use of respiratory protection equipment; or

(d) Other controls.

(2) If the licensee or registrant performs an ALARA analysis to determine if respirators should be used, the licensee or registrant may consider safety factors other than radiological factors. The licensee or registrant may also consider the impact of respirator use on workers' industrial health and safety.

Section 19. Use of Individual Respiratory Protection Equipment. (1) If a licensee or registrant uses respiratory protection equipment to limit the intake of radioactive material:

(a)1. The licensee or registrant shall use only respiratory protection equipment that shall be tested and certified by the National Institute for Occupational Safety and Health (NIOSH); or

2. Prior to using equipment that has not been tested or certified by NIOSH, or for which there exists no schedule for testing or certification, the licensee or registrant shall submit to the cabinet an application for authorized use of that equipment, except as provided in this administrative regulation.

a. The application shall include evidence that the material and performance characteristics of the equipment are capable of providing the proposed degree of protection under anticipated condition of use; and

b. The material and performance characteristics shall be demonstrated either by licensee or registrant testing or on the basis of reliable test information;

(b) A licensee or registrant shall implement and maintain a respiratory protection program that shall include:

1. Air sampling sufficient to identify the potential hazard, permit proper equipment selection, and estimate doses;

2. Surveys and bioassays, as appropriate, to evaluate actual intakes;

3. Testing of respirators for operability (user seal check for face sealing devices and functional check for others) immediately prior to each use;

4. Written procedures regarding:

- a. Respirator selection;
- b. Supervision and training of respirator users;
- c. Monitoring, including air sampling and bioassays;
- d. Fit testing;
- e. Breathing air quality;
- f. Inventory and control;
- g. Storage, issuance, maintenance, repair, testing, and quality assurance of respiratory protection equipment;
- h. Recordkeeping; and
- i. Limitations on periods of respirator use and relief from respirator use;

5. Determination by a physician prior to initial fitting of a face sealing respirator, and either every twelve (12) months or periodically at a frequency determined by a physician, that the individual user shall be medically fit to use the respiratory protection equipment; and

6. Fit testing, with a fit factor ten (10) times the APF for negative pressure devices and a fit factor greater than or equal to 500 for any positive pressure, continuous flow, and pressure-demand devices, before the first field use of tight fitting, face-sealing respirators and periodically thereafter at a frequency not to exceed one (1) year. Fit testing shall be performed with the facepiece operating in the negative pressure mode;

(c) A licensee or registrant shall issue a written policy statement on respirator usage covering the:

1. Use of process or other engineering controls, instead of respirators;

2. Routine, nonroutine, and emergency use of respirators; and

3. Periods of respirator use and relief from respirator use;

(d) A licensee or registrant shall advise a respirator user that the user may leave the area for relief from respirator use in the event of:

1. Equipment malfunction;

2. Physical or psychological distress;

3. Procedural or communication failure;

4. Significant deterioration of operating conditions; or

5. Other conditions that may require relief;

(e) A licensee or registrant, when selecting respiratory devices, shall:

1. Consider limitations appropriate to type and mode of use;

2. Provide visual correction, adequate communication, low temperature work environments, and concurrent use of other safety or radiological equipment; and

3. Use equipment in a way as not to interfere with the proper operation of the respirator;

(f) Standby rescue persons shall:

1. Be required if one-piece atmosphere-supplying suits or any combination of supplied air respiratory protection device and personnel protective equipment are used from which an unaided individual would have difficulty extricating himself or herself;

2. Be equipped with respiratory protection devices or other apparatus appropriate for the potential hazards;

3. Observe or otherwise maintain continuous communication with the workers (visual, voice, signal line, telephone, radio, or other suitable means); and

4. Be immediately available to assist them in case of a failure of the air supply or for any other reason that requires relief from distress;

(g) A sufficient number of standby rescue persons shall be immediately available to assist all users of this type of equipment and to provide effective emergency rescue if needed;

(h) Atmosphere-supplying respirators shall be supplied with respirable air of grade D quality or better as defined by Compressed Gas Association in publication G-7.1, Commodity Specification for Air, and included in the regulations of the Occupational Safety and Health Administration (29 C.F.R. 1910.134(i)(1)(ii)(A) through (E)). Grade D quality of air criteria include:

1. Oxygen content (v/v) of 19.5-23.5 percent;

2. Hydrocarbon (condensed) content of five (5) milligrams per cubic meter of air or less;

3. Carbon monoxide (CO) content of ten (10) parts per million (ppm) or less;

4. Carbon dioxide content of 1,000 ppm or less; and

5. Lack of noticeable odor;

(i) The licensee or registrant shall ensure that no objects, materials, or substances, such as, facial hair, or any conditions that interfere with the face-facepiece seal or valve function, and that are under the control of the respirator wearer, are present between the skin of the wearer's face and the sealing surface of a tight-fitting respirator facepiece; and

(j)1. In estimating the dose to individuals from intake of airborne radioactive materials, the concentration of radioactive material in the air that is inhaled when respirators are worn is initially assumed to be the ambient concentration in air without respiratory protection divided by the assigned protection factor.

2. If the dose is later found to be greater than the estimated dose, the corrected value shall be used.

3. If the dose is later found to be less than the estimated dose, the corrective value may be used.

(2) The licensee shall obtain authorization from the cabinet before using assigned protection factors in excess of those specified in 10 C.F.R. 20, Appendix A. The cabinet may authorize a licensee to use higher assigned protection factors on receipt of an application that:

(a) Describes the situation for which a need exists for higher protection factors; and

(b) Demonstrates that the respiratory protection equipment provides these higher protection factors under the proposed conditions of use.

Section 20. Further Restrictions on the Use of Respiratory Protection Equipment. The cabinet may impose restrictions in addition to those in Sections 18 and 19 of this administrative regulation and 10 C.F.R. 20, Appendix A to:

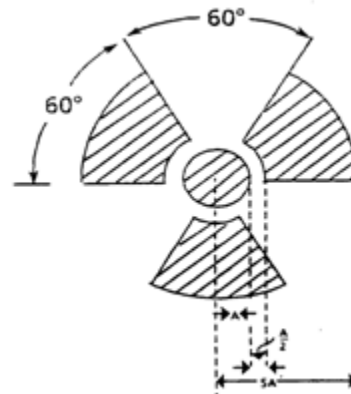
(1) Ensure that the respiratory protection program of the licensee shall be adequate to limit doses to individuals from intakes of airborne radioactive materials consistent with maintaining total effective dose equivalent ALARA; and

(2) Limit the extent to which a licensee shall use respiratory protection equipment instead of process or other engineering controls.

Section 21. Security of Sources of Radiation. A licensee or registrant shall secure from unauthorized removal or access, licensed materials stored in controlled or unrestricted areas.

Section 22. Control of Sources of Radiation Not in Storage. A licensee or registrant shall control and maintain constant surveillance of licensed or registered material in a controlled or unrestricted area and not in storage.]

Section 14.[Section 23.] Caution Signs and Standard Radiation Symbol.



RADIATION SYMBOL

(1) Unless otherwise authorized by the cabinet, the symbol established in this section shall use the colors magenta, purple, or black on yellow background. The symbol established in this section shall be the three (3) bladed design:

- (a) Cross-hatched area shall be magenta, purple, or black; and
- (b) The background shall be yellow.

(2) ~~[Exception to color requirements for standard radiation symbol. A licensee or registrant may label sources, source holders, or device components containing sources of radiation subjected to high temperatures with conspicuously etched or stamped radiation caution symbols and without a color requirement.~~

(3) Additional information on signs and labels. In addition to the contents of signs and labels prescribed in this section, a ~~[licensee or]~~ registrant may provide on or near the required signs and labels additional information, as appropriate, to make individuals aware of potential radiation exposures and to minimize the exposures.

Section 15.~~[Section 24.]~~ Posting Requirements. (1) Posting of radiation areas. A ~~[licensee or]~~ registrant shall post a radiation area with a conspicuous sign or signs bearing the radiation symbol and the words: "CAUTION, RADIATION AREA".

(2) Posting of high radiation areas. A ~~[licensee or]~~ registrant shall post a high radiation area with a conspicuous sign or signs bearing the radiation symbol and the words: "CAUTION, HIGH RADIATION AREA" or "DANGER, HIGH RADIATION AREA".

(3) Posting of very high radiation areas. A ~~[licensee or]~~ registrant shall post a very high radiation area with a conspicuous sign or signs bearing the radiation symbol and words: "GRAVE DANGER, VERY HIGH RADIATION AREA".

(4) Posting of airborne radioactivity areas. A licensee or registrant shall post an airborne radioactivity area with a conspicuous sign or signs bearing the radiation symbol and the words: "CAUTION, AIRBORNE RADIOACTIVITY AREA" or "DANGER, AIRBORNE RADIOACTIVITY AREA".

(5) Posting of areas or rooms in which licensed or registered material shall be used or stored. A licensee or registrant shall post an area or room in which there is used or stored an amount of licensed or registered material exceeding ten (10) times the quantity of the material specified in 902 KAR 100:030 with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL(S)" or "DANGER, RADIOACTIVE MATERIAL(S)".

Section 16.~~[Section 25.]~~ Exceptions to Posting Requirements.

(1) A ~~[licensee or]~~ registrant shall not be required to post caution signs in areas or rooms containing sources of radiation for periods of less than eight (8) hours if the following conditions are met:

(1)(a) The sources of radiation are constantly attended during these periods by an individual who takes the precautions necessary to prevent the exposure of individuals to radiation ~~[or radioactive materials]~~ in excess of the limits established in this administrative regulation; and

(2)(b) The area or room is subject to the ~~[licensee's or]~~ registrant's control.

(2) Rooms or other areas in hospitals occupied by patients shall not be required to be posted with caution signs pursuant to Section 24 of this administrative regulation if the patient could be released from licensee control in accordance with 902 KAR 100:072, Section 27.

(3) A room or area is not required to be posted with a caution sign because of the presence of a sealed source if the radiation level at thirty (30) centimeters from the surface of the source container or housing does not exceed 0.005 rem (0.05 mSv) per hour.

(4) Rooms in hospitals or clinics that are used for teletherapy are exempt from the requirement to post caution signs under Section 24 of this administrative regulation if:

(a) Access to the room is controlled pursuant to 902 KAR 100:072, Section 50; and

(b) Personnel in attendance take necessary precautions to prevent the inadvertent exposure of workers, other patients, and

members of the public to radiation in excess of the limits established in this administrative regulation.

Section 26. Labeling Containers. (1) A licensee or registrant shall ensure a container of licensed or registered material bears a durable, clearly visible label with the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL".

(a) The label shall provide the following information:

1. Radionuclide present;
2. An estimate of the quantity of radioactivity;
3. Date the activity is estimated;
4. Radiation levels;
5. Kinds of materials; and
6. Mass enrichment.

(b) Information in this subsection shall permit individuals handling or using the containers, or working in the vicinity of the containers, to take precautions to avoid or minimize exposures.

(2) A licensee or registrant shall, prior to removal or disposal of empty uncontaminated containers to unrestricted areas:

(a) Remove or deface the radioactive material label; or

(b) Clearly indicate the container no longer contains radioactive materials.

Section 27. Exemptions to Labeling Requirements. (1) A licensee or registrant shall not be required to label:

(a) Containers holding licensed or registered material in quantities less than the quantities listed in 902 KAR 100:030;

(b) Containers holding licensed or registered material in concentrations less than those specified in 10 C.F.R. 20, Appendix B;

(c) Containers attended by an individual who takes precautions necessary to prevent the exposure of individuals in excess of the limits established by this administrative regulation;

(d) Containers if they are in transport and packaged and labeled in accordance with 49 C.F.R. Parts 100-180;

(e) Containers that are accessible only to individuals authorized to handle or use them, or to work in the vicinity of the containers, if the contents are identified to these individuals by a readily available written record (for example, containers in locations that include water-filled canals, storage vaults, or hot cells). The record shall be retained as long as the containers are in use for the purpose indicated on the record; or

(f) Installed manufacturing or process equipment, such as chemical process equipment, piping, and tanks.

(2) Labeling of packages containing radioactive materials shall be required by the U.S. Department of Transportation (DOT) if the amount and type of radioactive material exceeds the limits for an excepted quantity or article pursuant to 49 C.F.R. 173.403 and 173.421-173.424.

Section 28. Procedures for Receiving and Opening Packages.

(1) A licensee or registrant who expects to receive a package containing quantities of radioactive material in excess of a Type A quantity pursuant to 902 KAR 100:010 shall make arrangements to receive:

(a) The package if the carrier offers it for delivery; or

(b) Notification of the arrival of the package at the carrier's terminal and take possession of the package expeditiously.

(2)(a) A licensee or registrant shall monitor the external surfaces of a labeled package for:

1. Radioactive contamination unless the package contains only radioactive material in the form of a gas or in special form as defined in 902 KAR 100:010; and

2. Radiation levels unless the package contains quantities of radioactive material that are less than or equal to the Type A quantity defined in 902 KAR 100:010; and

(b) All packages known to contain radioactive material for radioactive contamination and radiation levels if there is evidence of potential contamination such as packages that are crushed, wet, or damaged.

(3) A licensee or registrant shall perform the monitoring required by subsection (2) of this section as soon as practicable

after receipt of the package, but not later than three (3) hours:

(a) After the package is received at the licensee's facility if received during the licensee's or registrant's normal working hours; or

(b) From the beginning of the next working day if received after working hours.

(4) A licensee or registrant shall immediately notify the final delivery carrier and the Manager of the Radiation Health Branch by telephone if:

(a) Removable radioactive surface contamination exceeds the limits of 902 KAR 100:070, Section 17; or

(b) External radiation levels exceed the limits of 902 KAR 100:070, Section 17.

(5) A licensee or registrant shall:

(a) Establish, maintain, and retain written procedures for safely opening packages in which radioactive material is received; and

(b) Ensure that the procedures are followed and due consideration is given to special instructions for the type of package being opened.

(6) A licensee or registrant transferring special form sources in licensee or registrant owned or operated vehicles to and from a work site shall be exempt from the contamination monitoring requirements of subsection (2) of this section, but shall not be exempt from the survey requirement for measuring radiation levels that are required to ensure the source shall remain properly lodged in its shield.]

Section 17.[Section 29.] General Provisions for Records. (1)(a) A [licensee or] registrant shall use the units roentgen[curie], rad, and rem, including multiples and subdivisions, and shall clearly indicate the units of quantities on records required by this administrative regulation.

(b)[4.] All quantities shall be recorded as stated in paragraph (a) of this section, except that the registrant[licensee] may record quantities in the International System of Units (SI) in parentheses following each of the units specified in paragraph (a) of this section.

[2. Information shall be recorded in SI or in SI and units as specified in paragraph (a) of this section when recording information on shipment manifests, as required in 902 KAR 100:021, Section 9.]

(2) A [licensee or] registrant shall make a clear distinction among the quantities entered on the records required by this administrative regulation, such as:

- (a) Total effective dose equivalent;
- (b) Shallow-dose equivalent;
- (c) Eye dose equivalent;
- (d) Deep-dose equivalent; and
- (e) Committed effective dose equivalent.

Section 18.[Section 30.] Records of Radiation Protection Programs. (1) A [licensee or] registrant shall maintain records of the radiation protection program, including:

- (a) The provisions of the program; and
- (b) Audits and other reviews of program content and implementation.

(2) A [licensee or] registrant shall retain records required by subsection (1)(a) of this section until the cabinet terminates each pertinent registration[license] requiring the record.

(3) A [licensee or] registrant shall retain records required by subsection (1)(b) of this section for at least three (3) years after the record is made.

Section 19.[Section 31.] Records of Surveys. (1) A [licensee or] registrant shall:

(a) Maintain records showing the results of surveys and calibrations required by Section 10[Sections 12 and 28(2)] of this administrative regulation; and

(b) Retain records for at least three (3) years after the record is made.

(2) A [licensee or] registrant shall retain [the following records until the cabinet terminates the pertinent license or registration requiring the record:

(a)] results of surveys to determine the dose from external sources of radiation and used, in the absence of or in combination with individual monitoring data, in the assessment of individual dose equivalents until the cabinet terminates the pertinent registration requiring the record];

(b) ~~Results of measurements and calculations used to determine individual intakes of radioactive material and used in the assessment of internal dose;~~

(c) ~~Results of air sampling, surveys, and bioassays required pursuant to Section 19(1)(b)1. and 2. of this administrative regulation; and~~

(d) ~~Results of measurements and calculations used to evaluate the release of radioactive effluents to the environment].~~

Section 20.[Section 32.] Determination of Prior Occupational Dose. (1) For an individual likely to receive, in a year, an occupational dose requiring monitoring under Section 11[13] of this administrative regulation, the [licensee or] registrant shall:

(a) Determine the occupational radiation dose received during the current year; and

(b) Attempt to obtain the records of lifetime cumulative occupational radiation dose.

(2) Prior to permitting an individual to participate in a planned special exposure, a [licensee or] registrant shall determine:

(a) The [internal and] external doses from previous planned special exposures; and

(b) Doses in excess of the limits, including doses received during accidents and emergencies, received during the lifetime of the individual.

(3) In complying with the requirements of subsection (1) of this section, a [licensee or] registrant may:

(a) Accept, as a record of the occupational dose the individual received during the current year, a written signed statement from the individual or from the individual's most recent employer for work involving radiation exposure, that discloses the nature and amount of an occupational dose the individual may have received during the current year;

(b) Accept, as the record of lifetime cumulative radiation dose, an up-to-date Nuclear Regulatory Commission (NRC) NRC] Form 4, Cumulative Occupational Dose History, available at <https://www.nrc.gov/reading-rm/doc-collections/forms/index.html>, or equivalent, signed by the individual and counter-signed by an:

1. Appropriate official of the most recent employer for work involving radiation exposure; or

2. The individual's current employer if the individual is not employed by the [licensee or] registrant; or

(c) Obtain reports of the individual's dose equivalent from the most recent employer for work involving radiation exposure, or the individual's current employer if the individual is not employed by the [licensee or] registrant, by telephone, [telegram,] electronic media, or letter. If the authenticity of the transmitted report cannot be established, a [licensee or] registrant shall request a written verification of the dose data.

(4) A [licensee or] registrant shall record the exposure history, as required by subsection (1) of this section, on NRC Form 4, Cumulative Occupational Dose History, or other clear and legible record, of the information required on that form.

(a) The form or record shall:

1. Show each period the individual received occupational exposure to radiation[or radioactive material]; and

2. Be signed by the individual who received the exposure.

(b) For each period a [licensee or] registrant obtains reports, the [licensee or] registrant shall use the dose shown in the report in preparing NRC Form 4, Cumulative Occupational Dose History.

(c) For a period in which a [licensee or] registrant does not obtain a report, the registrant[licensee] shall place a notation on NRC Form 4, Cumulative Occupational Dose History, indicating the periods of time for which data are not available.

(5) If a registrant[licensee] is unable to obtain a complete record of an individual's current and previously accumulated occupational dose, the [licensee or] registrant shall assume:

(a) In establishing administrative controls under Section 34[(6)] of this administrative regulation for the current year, that

the allowable dose limit for the individual is reduced by 1.25 rems (twelve and five-tenths (12.5) mSv) for each quarter for which records were unavailable and the individual was engaged in activities that may have resulted in occupational radiation exposure; and

(b) That the individual is not available for planned special exposures.

(6) A [licensee or] registrant shall:

(a) Retain the records on NRC Form 4, Cumulative Occupational Dose History, or equivalent, at least until the cabinet terminates the pertinent [license or] registration requiring this record; and

(b) Retain records used in preparing NRC Form 4, Cumulative Occupational Dose History, for at least three (3) years after the record is made.

Section 21.~~[Section 33.]~~ Records of Planned Special Exposures. (1) For each use of the provisions of Section 5~~[7]~~ of this administrative regulation for planned special exposures, a [licensee or] registrant shall maintain records that include:

(a) The name of the management official who authorized the planned special exposure;

(b) A copy of the signed authorization; and

(c) Description of:

1. The exceptional circumstances requiring the use of a planned special exposure;

2. What actions were necessary;

3. Why the actions were necessary;

4. How doses were maintained ALARA;

5. What individual and collective doses were expected to result; and

6. The doses actually received in the planned special exposure.

(2) A [licensee or] registrant shall retain the records at least until the cabinet terminates the ~~[pertinent license or]~~ registration requiring these records.

Section 22.~~[Section 34.]~~ Records of Individual Monitoring Results. (1) A [licensee or] registrant shall maintain records of doses received:

(a) By individuals for whom monitoring was required by Section 11~~[43]~~ of this administrative regulation; and

(b) During planned special exposures, accidents, and emergency conditions.

(2) The recordkeeping requirements shall include, if applicable:

(a) Deep-dose equivalent to the whole body;

(b) Lens dose equivalent;

(c) Shallow-dose equivalent to the skin and extremities; and

(d) [Estimated intake of radionuclides;

(e) Committed effective dose equivalent assigned to the intake of radionuclides;

~~(f) Specific information used to calculate the committed effective dose equivalent under Section 6(1) and (3), and Section 13 if required, of this administrative regulation;~~

~~(g)] Total effective dose equivalent, if required by Section 4 of this administrative regulation[; and~~

~~(h) Total of the deep-dose equivalent and the committed dose to the organ receiving the highest total dose].~~

(3) A [licensee or] registrant shall make entries of the records specified in subsection (1) of this section at least annually.

(4) A [licensee or] registrant shall maintain the records specified in subsection (1) of this section on NRC Form 5, Occupational Dose Record for a Monitoring Period, available at <https://www.nrc.gov/reading-rm/doc-collections/forms/index.html>, in accordance with the instructions for NRC Form 5, or in clear and legible records containing the information required by NRC Form 5.

(5) The records required under this section shall be protected from public disclosure because of their personal privacy nature.

(6) A [licensee or] registrant shall maintain the:

(a) Records of dose to an embryo or fetus with the records of dose to the declared pregnant woman; and

(b) Declaration of pregnancy on file, which may be maintained separately from the dose records.

(7) A ~~[licensee or]~~ registrant shall retain each required form or record at least until the cabinet terminates the pertinent license or registration requiring the record.

(8) Assessments of dose equivalent and records made using units in effect before a [licensee's or] registrant's adoption of this administrative regulation need not to be changed.

Section 23.~~[Section 35.]~~ Records of Dose to Individual Members of the Public. (1) A [licensee or] registrant shall maintain records sufficient to demonstrate compliance with the dose limit for individual members of the public.

(2) A [licensee or] registrant shall retain the records required by subsection (1) of this section at least until the cabinet terminates the pertinent [license or] registration requiring the record.

~~[Section 36. Records of Testing Entry Control Devices for Very High Radiation Areas. (1) A licensee or registrant shall maintain records of tests made under Section 16(3)(i) of this administrative regulation on entry control devices for very high radiation areas. These records shall include the date, time, and results of each test of function.~~

~~(2) A licensee or registrant shall retain the records required by subsection (1) of this section for at least three (3) years after the record is made.]~~

Section 24.~~[Section 37.]~~ Form of Records. (1) Records required by 902 KAR Chapter 100 shall be legible throughout the specified retention period.

(2) The record shall be:

(a) The original; or

(b) A reproduced copy~~;~~ or

~~(c) A microform if the copy or microform is authenticated by authorized personnel and the microform is capable of producing a clear copy throughout the required retention period].~~

(3) The record may be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period.

(4) Records such as letters, drawings, and specifications shall include pertinent information such as stamps, initials, and signatures.

(5) A [licensee or] registrant shall maintain adequate safeguards against tampering with and loss of records.

Section 25.~~[Section 38.]~~ Reports of Theft or Loss of [Licensed or] Registered Sources of Radiation.

(1) A registrant shall report to the cabinet a lost, stolen, or missing registered radiation producing machine [Telephone reports

are:

(a) A licensee or registrant shall report by telephone as follows:

1. Immediately after its occurrence becomes known to the licensee or registrant, lost, stolen, or missing licensed or registered material in an aggregate quantity equal to or greater than 1,000 times the quantity specified in 902 KAR 100:030 under circumstances in which it appears to the licensee or registrant that an exposure may result to persons in unrestricted areas; or

2.] within thirty (30) days after the occurrence.

(2) The report shall include:

(a) A description of the registered machine involved, including:

1. Type of machine;

2. Make and model of machine; and

3. Maximum outputs;

(b) The date the loss or theft became known to the registrant; and

(c) A description of the circumstances under which the loss or theft occurred[~~of lost, stolen, or missing licensed or registered material becomes known to the licensee or registrant, licensed or registered material in a quantity greater than ten (10) times the quantity pursuant to 902 KAR 100:030 still missing at this time.~~

(b) Reports shall be made to the cabinet.

(2) Written reports.

(a) A licensee or registrant required to make a report pursuant to subsection (1) of this section shall, within thirty (30) days after making the telephone report, make a written report setting forth the

following information:

1. Description of the licensed or registered material involved, including:

- a. Kind;
- b. Quantity; and
- c. Chemical and physical form;

2. Description of the circumstances under which the loss or theft occurred;

3. Statement of disposition, or probable disposition, of the licensed or registered material involved;

4. Exposures of individuals to radiation, circumstances under which the exposures occurred, and the possible total effective dose equivalent to persons in unrestricted areas;

5. Actions that have been or shall be taken to recover the material; and

6. Procedures or measures that have been or shall be adopted to ensure against a recurrence of the loss or theft of licensed or registered material.

(b) Reports shall be made to the cabinet.

(3) Subsequent to filing the written report, a licensee or registrant shall report additional substantive information on the loss or theft within thirty (30) days after the licensee or registrant learns of the information.

(4) A licensee or registrant shall prepare and file a report with the cabinet as required by this section so that names of individuals who may have received exposure to radiation shall be stated in a separate and detachable part of the report].

Section 26.[Section 39.] Notification of Incidents. (1) Immediate notification. A [licensee or] registrant shall immediately report an event involving radiation producing machines[radioactive material] possessed by the [licensee or] registrant that may have caused, or threatens to cause, [one (1) or more of the following conditions:

(a)] an individual to[may] receive:

(a)[1.] A total effective dose equivalent of twenty-five (25) rems (0.25 Sv) or more;

(b)[2.] A lens dose equivalent of seventy-five (75) rems (0.75 Sv) or more; or

(c)[3.] A shallow-dose equivalent to the skin or extremities of 250 rads (two and five-tenths (2.5) Gy) or more];

(b) The release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for twenty-four (24) hours, the individual may have received an intake five (5) times the occupational annual limit on intake. The provisions of this paragraph shall not apply to locations in which personnel are not normally stationed during routine operations, such as in hot-cells or process enclosure;

(c) A loss of one (1) working week or more of the operation of facilities affected; or

(d) Damage to property in excess of \$200,000].

(2) Twenty-four (24) hour notification. A [licensee or] registrant shall, within twenty-four (24) hours of discovery of the event, report an event [involving loss of control of licensed or registered source of radiation possessed by the licensee or registrant] that may have caused, or shall threaten to cause, [one (1) or more of the following conditions:

(a)] an individual to receive, in a period of twenty-four (24) hours:

(a)[1.] A total effective dose equivalent exceeding five (5) rems (0.05 Sv);

(b)[2.] A lens dose equivalent exceeding fifteen (15) rems (0.15 Sv); or

(c)[3.] A shallow-dose equivalent to the skin or extremities exceeding fifty (50) rems (five-tenths (0.5) Sv)];

(b) The release of radioactive material, inside or outside of a restricted area so that, had an individual been present for twenty-four (24) hours, the individual may have received an intake in excess of one (1) occupational annual limit on intake. The provisions of this paragraph shall not apply to locations in which personnel are not normally stationed during routine operations, such as in hot-cells or process enclosures;

(c) A loss of one (1) day or more of the operation of facilities affected; or

(d) Damage to property in excess of \$2,000].

(3) A [licensee or] registrant shall prepare and file a report with the cabinet as required by this section so that names of individuals who have received exposure to radiation [or radioactive material] are stated in a separate and detachable part of the report.

(4) A [Licensees or] registrant shall make reports required by subsections (1) and (2) of this section to the cabinet by telephone.

(5) The provisions of this section shall not include doses that result from planned special exposures that are within the limits for planned special exposures, and are reported under Section 28[44] of this administrative regulation.

Section 27.[Section 40.] Reports of Exposures and[.] Radiation Levels[, and Concentrations of Radioactive Material] Exceeding the Limits. (1) Reportable events. In addition to the notification required by Section 26[39] of this administrative regulation, a [licensee or] registrant shall submit a written report within thirty (30) days after learning of one (1) or more of the following occurrences:

(a) An incident for which notification shall be required by Section 26[39] of this administrative regulation; or

(b) Doses in excess of one (1) of the following:

1. Occupational dose limits for adults in Section 3 of this administrative regulation;

2. Occupational dose limits for a minor in Section 6[8] of this administrative regulation;

3. Limits for an embryo or fetus of a declared pregnant woman in Section 7[9] of this administrative regulation;

4. Limits for an individual member of the public in Section 8[40] of this administrative regulation; or

5. Applicable limit in the license or registration; or

[6. ALARA constraints for air emissions established under Section 2(4);]

(c) Levels of radiation [or concentrations of radioactive material] in:

1. A restricted area in excess of an applicable limit in the [license or] registration; or

2. An unrestricted area in excess of ten (10) times an applicable limit set forth in this administrative regulation[, the license,] or the registration, regardless of exposure of an individual in excess of the limits in Section 8[40] of this administrative regulation occurs[; or

(d) For a person, agency, or licensee subject to the provisions of 40 C.F.R. 190, levels of radiation or releases of radioactive material in excess of those standards, or conditions related to those standards].

(2) Contents of reports.

(a) A report required by subsection (1) of this section shall describe the extent of exposure of individuals to radiation [and radioactive material,] including, as appropriate:

1. Estimates of each individual's dose;

2. The levels of radiation [and concentrations of radioactive material] involved;

3. The cause of the elevated exposures or[.] dose rates[, or concentrations]; and

4. Corrective steps taken or planned to ensure against a recurrence, including the schedule for achieving conformance with applicable limits[, ALARA constraints and environmental standards, and associated license or registration conditions].

(b) A report filed under subsection (1) of this section shall include for each individual exposed:

1. Name of the individual;

2. Social Security number; and

3. Date of birth.

(c) The report shall be prepared so that information is stated in a separate and detachable part.

(d) With respect to the limit for the embryo or fetus, the identifiers shall be of the declared pregnant woman.

(3) A [licensee or] registrant who makes a report under subsection (1) of this section shall submit the report, in writing, to the Manager of the Radiation Health Branch, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

Section 28.[Section 41.] Reports of Planned Special

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Exposures. (1) A [licensee or] registrant shall submit a written report to the Manager of the Radiation Health Branch, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, within thirty (30) days following a planned special exposure conducted in accordance with Section 5[7] of this administrative regulation.

(2) A [licensee or] registrant shall:

(a) Inform the Manager of the Radiation Health Branch that a planned special exposure was conducted;

(b) Indicate the date the planned special exposure occurred; and

(c) Provide the information required by Section 21[33] of this administrative regulation.

[Section 42. Reports of Individual Monitoring. (1) This section shall apply to persons licensed or registered by the cabinet to:

(a) Possess or use sources of radiation for purposes of radiography authorized by 902 KAR 100:100;

(b) Receive radioactive waste from other persons for disposal pursuant to 902 KAR 100:022; or

(c) Possess or use, for processing or manufacturing for distribution required by 902 KAR 100:058, byproduct material in amounts exceeding one (1) of the following quantities:

	Quantity of Radionuclide ^a in curies
Cesium-137	4
Cobalt-60	4
Gold-198	100
Iodine-131	4
Iridium-192	10
Krypton-85	1,000
Promethium-147	10
Technetium-99m	1,000

^aIf necessary, the cabinet may require as a license or registration condition, KRS 211.842-211.852 or 902 KAR 100:015, Section 8, reports from licensees or registrants who are licensed or registered to use radionuclides not on this list, in quantities sufficient to cause comparable radiation levels.

(2) A licensee or registrant in a category listed in subsection (1) of this section shall:

(a) Submit an annual report of the results of individual monitoring carried out by the licensee for each individual for whom monitoring was required by Section 13 of this administrative regulation during that year; and

(b) Use Form NRC 5, Occupational Dose Record for a Monitoring Period, or other clear and legible record, which contains all the information required by Form NRC 5.

(3) A licensee or registrant may include additional data for individuals for whom monitoring may be provided, but not required.

(4) A licensee or registrant shall:

(a) File the report required by subsection (2) of this section covering the preceding year on or before April 30 of each year; and

(b) Submit the report to the Manager of the Radiation Health Branch, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

Section 43. Protection Factors for Respirators. Protection factors shall be determined as established in 10 C.F.R. 20, Appendix A.

Section 44. Annual Limits on Intake (ALI) and Derived Air Concentrations (DAC) of radionuclides for occupational exposure, effluent concentrations, and concentrations for release to sanitary sewerage shall be determined as established in 10 C.F.R. 20, Appendix B.

Section 45. Material Incorporated by Reference.

(1) The following material is incorporated by reference:

(a) "Cumulative Occupational Dose History", NRC Form 4, June 2011;

(b) "Occupational Dose Record for a Monitoring Period", NRC Form 5, June 2011; and

(c) "Commodity Specification for Air", August 2004.

~~(2) This material may be inspected, copied, or obtained, subject to copyright law, at the Office of the Commissioner of Public Health, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. until 4:30 p.m., Monday through Friday.]~~

STEVEN J. STACK, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 5, 2023

FILED WITH LRC: June 12, 2023 at 12:35 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2023, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by August 14, 2023, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2023. 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: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for the protection of the user and general public against radiation exposure and establishes standards for protection against ionizing radiation resulting from activities conducted by persons issued registrations by the cabinet. This administrative regulation establishes standards to control the receipt, possession, use, transfer, and disposal of sources of radiation by a person or registrant so the total dose to an individual (including doses resulting from registered and unregistered radiation sources other than background radiation) shall not exceed the standards for protection against radiation established in this administrative regulation.

(b) The necessity of this administrative regulation: Exposure to radiation can have long lasting effects on the individual's health. The occupational exposure controls and limits established in this administrative regulation ensure the individual is protected from an overexposure of radiation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.844 requires the cabinet to provide by administrative regulation for the registration of the possession or use of sources of ionizing or electronic product radiation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures those registered with the cabinet to possess or use sources of ionizing radiation are properly registered, and individual are properly monitored to avoid an overexposure to radiation.

(2) If 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 that the requirements for registration and monitoring are applicable to sources of ionizing radiation and those who work with those machines, updates the dose limits to current industry standards, and makes other changes necessary for KRS Chapter 13A compliance.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to avoid confusion regarding the applicability of the requirements for monitoring dose limits. Those who are licensed to possess radioactive materials should not be referencing this administrative regulation. This administrative regulation is applicable to those who are registered with the cabinet to possess and utilize sources of ionizing radiation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.842(1) establishes the Cabinet for Health and Family Services as the radiation control agency for the State of Kentucky. KRS 211.844 requires the cabinet to provide by administrative regulation for the registration of the possession or use of sources of ionizing or electronic product radiation.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will ensure all those who are registered to possess and use sources of ionizing radiation are properly registered with the cabinet and will ensure any occupational exposure to radiation is properly monitored.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 4,250 registrants. Registrants include those in the fields of medicine, research, industry, as well as academia, and all employees who use sources of ionizing radiation in their employment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals who are registered to possess and use sources of ionizing radiation will need to be aware of the occupational exposure limits, and registrants will need to be aware of the exposure limit, signage, and reporting requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to the regulated entities as compliance with this administrative regulation is currently a condition of registration.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Workers who use sources of ionizing radiation in their employment will be properly protected from overexposure to radiation.

(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: This administrative regulation does not impact cost for the agency.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Radiation Health Branch is funded through a mix of state general fund dollars and the fees paid by registrants to possess and use sources of ionizing radiation.

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

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 Radiation Health Branch in the Department for Public Health will be impacted by the amendment to this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 and 211.844.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 does not impact cost for the agency.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation does not impact cost for the agency.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Cost savings for the regulated entities will result from ensuring the occupational dose to employees does not exceed established limits. Overexposure to occupational sources of ionizing radiation can result in increased time away from work and other related health concerns for the employee.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Registrants will continue to see costs savings by protecting workers from overexposure to occupational sources of ionizing radiation in subsequent years.

(c) How much will it cost the regulated entities for the first year? There will be no cost to regulated entities in the first year as the requirements of this administrative regulation are not new requirements.

(d) How much will it cost the regulated entities for subsequent years? There will be no change in the cost for 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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)

902 KAR 100:040. General provisions for specific licenses.

RELATES TO: KRS 194A.005, 211.842-211.852, 211.990(4), 10 C.F.R. Part 30, 42 U.S.C. 2021[30.31-30.34, 30.36-30.39, 30.41, 30.50, 30.51, 30.61, 11 U.S.C. 101(2), (14)]

STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3), 211.844

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law, to qualify for the receipt of federal funds, and to cooperate with other state and federal agencies. KRS 211.844 requires the cabinet [for Health and Family Services] to promulgate administrative regulations for regulating and licensing the possession or use of any source[sources] of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation establishes general provisions for the issuance of specific licenses to possess, use, or transfer radioactive material within Kentucky.

Section 1. Definitions. (1) "Agreement state" means a state with which the United States Nuclear Regulatory Commission (NRC) or the United States Atomic Energy Commission has entered into an effective agreement under subsection 274 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(b) et seq.).

(2) "Cabinet" is defined by KRS 194A.005(1).

(3) "Licensee" means a person who holds:

(a) A specific license issued by the cabinet issued in accordance with this administrative regulation;

(b) A specific license issued by the U.S. Nuclear Regulatory Commission or an agreement state; or

(c) A general license pursuant to 902 KAR 100:050 or equivalent regulations of the U.S. Nuclear Regulatory Commission or an agreement state.

Section 2. Applicability. This administrative regulation shall apply to a licensee. The licensee shall comply with 10 C.F.R. Part 30 except as established in subsections (1) through (3) of this section.

(1) The licensee shall not be subject to:

(a) 10 C.F.R. 30.6;

(b) 10 C.F.R. 30.8;

(c) 10 C.F.R. 30.10(b);

(d) 10 C.F.R. 30.21(c);

(e) 10 C.F.R. 30.34(d), (e)(1) and (e)(3);

(f) 10 C.F.R. 30.41(b)(6);

(g) 10 C.F.R. 30.55;

(h) 10 C.F.R. 30.62;

(i) 10 C.F.R. 30.63; or

(j) 10 C.F.R. 30.64.

(2) Reference to the NRC, the Commission, or an agreement state shall be deemed to reference the Cabinet for Health and Family Services, Department for Public Health, Radiation Health Branch, the NRC, or an agreement state.

(3) Reference to "NRC Form 313, Application for Material License" shall be deemed to be a reference to "Application for Kentucky Radioactive Materials License", form RPS-7.

Section 3. Reporting of Events or Notifications. The required reporting of events or notifications to the Radiation Health Branch shall be directed to:

(1) 275 East Main Street, Mailstop HS1C-A, Frankfort, Kentucky 40621;

(2) (502) 564-3700, Monday through Friday from 8 a.m. to 4:30 p.m.; or

(3) (800) 255-2587, at other hours.

Section 4. Incorporation by Reference. (1) "Application for Kentucky Radioactive Materials License", form RPS-7, 6/2011, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copy right law, at Department for Public Health, Radiation Health Branch, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material is available on the agency's Web site at <https://chfs.ky.gov/agencies/dph/dphps/rhb/Documents/RPS7RAMLicenseApplicationRenewal1.pdf>. [License Requirement. Except for persons exempted by 902 KAR 100:045 and 100:046, a person shall not manufacture, produce, receive, possess, use, transfer, own, or acquire radioactive material except as authorized in a specific or general license issued in accordance with 902 KAR Chapter 100. Authority to transfer possession or control by the manufacturer, processor, or producer of equipment, devices, commodity, or other products containing radioactive material whose subsequent possession, use, transfer, or disposal by other persons are exempted from regulatory requirements, may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C., 20555.]

Section 2. Types of Licenses. (1) Licenses for radioactive material shall be of two (2) types:

(a) General; or

(b) Specific.

(2) Except as specified in 902 KAR 100:050, general licenses shall be:

(a) Effective without the filing of an application with the cabinet or the issuance of licensing documents to the licensee; and

(b) Subject to other applicable requirements of 902 KAR Chapter 100 and limitations of 902 KAR 100:050.

(3) Specific licenses shall require:

(a) The submission of an application to the cabinet; and

(b) The issuance of a licensing document by the cabinet.

(4) Each license shall be subject to applicable requirements of 902 KAR Chapter 100 and to limitations specified in the licensing document.

Section 3. Filing of Application for a Specific License. (1) An application for specific license shall be filed with the Cabinet for Health and Family Services on Form RPS-7, incorporated by reference.

(2)(a) After the filing of the original application, or before the expiration of the license if the applicant has already been granted, the Cabinet may require additional information in order to determine if:

1. The application is to be granted or denied; or

2. A license is to be modified or revoked.

(b) Prelicensing visits may be made to the applicant's facility for the purpose of obtaining information in addition to that furnished in the original application.

(c) If the applicant or licensee fails to respond within thirty (30) days of receipt to a written request, for additional information, the cabinet shall suspend, modify, or revoke the license in accordance with 902 KAR 100:170, or shall deny the application.

(3) The application shall be signed by the applicant or licensee or a person duly authorized to act for and on his behalf.

(4) An application for a license may include a request for a license authorizing one (1) or more activities if the application specifies the additional activities and complies with the provisions of 902 KAR Chapter 100 relating to specific licenses.

(5)(a) The applicant may incorporate in the application, by reference, information contained in previous applications, statements, or reports filed with the cabinet, if references are clear and specific.

(b) Information provided to the cabinet by an applicant or licensee, or information required to be maintained by statute, by 902 KAR Chapter 100, cabinet orders, or license conditions, shall be complete and accurate in all aspects.

(6) An application for a specific license to use radioactive material in the form of a sealed source or in a device that contains the sealed source shall:

(a) Identify the source or device by manufacture and model number as registered with:

1. The cabinet;
2. The U.S. Nuclear Regulatory Commission; or
3. An agreement state; and

(b) Contain the information identified in 902 KAR 100:058, Section 1.

(7) An application for a specific license shall contain, if required by the administrative regulation referenced:

(a) 1. A proposed decommissioning funding plan; or

2. A certification of financial assurance for decommissioning in accordance with 902 KAR 100:042; and

(b) An emergency plan for responding to a release in accordance with 902 KAR 100:041.

Section 4. General Requirements for the Issuance of a Specific License. (1) A license application shall be approved if the cabinet determines:

(a) The applicant is qualified by reason of training and experience to use the radioactive material in question for the purpose requested, in accordance with 902 KAR Chapter 100, and in a manner that minimizes danger to public health and safety or property;

(b) The applicant's proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property;

(c) The issuance of the license will not be adverse to the health and safety of the public; and

(d) The applicant satisfies applicable special requirements in 902 KAR Chapter 100.

(2) For an application for a license to receive and possess radioactive material that the cabinet determines will significantly affect the quality of the environment, the following shall apply:

(a) The secretary of the cabinet or his designee shall, before commencement of construction of the plant or facility in which the activity is to be conducted, weigh the environmental, economic, technical, and other benefits against environmental costs and shall consider available alternatives.

(b) The secretary shall, if appropriate, approve a license modified by conditions designed to protect environmental values.

(c) Commencement of construction prior to cabinet determination shall be grounds for denial of a license to receive and possess radioactive material in the plant or facility. As used in this subsection, "commencement of construction" shall include clearing of land, excavation, or other substantial action that would adversely affect the environment of a site, but shall not include site exploration, necessary roads for site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the site or the protection of environmental values.

(3)(a) The licensee shall notify the cabinet in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under Title 11 of the United States Code by or against:

1. The licensee;
2. An entity, as defined in 11 U.S.C. 101(14) or (15), controlling the licensee or listing the license or licensee as property of the estate; or
3. An affiliate, as defined in 11 U.S.C. 101(2), of the licensee.

(b) The notification shall indicate:

1. The bankruptcy court in which the petition for bankruptcy was filed; and
2. The date and case number of the filing of the petition.

Section 5. Issuance of Specific Licenses. (1) Upon a determination that an application meets the requirements of KRS 211.842 to 211.852 and 902 KAR Chapter 100, the cabinet shall issue a specific license authorizing the proposed activity in a form containing necessary and appropriate conditions and limitations.

(2) The cabinet may incorporate in a license when issued, or thereafter by appropriate rule, 902 KAR Chapter 100, or order, or as specified in Section 13 of this administrative regulation, additional requirements and conditions with respect to the

licensee's receipt, possession, use, and transfer of radioactive material subject to 902 KAR Chapter 100 as it deems appropriate or necessary in order to:

(a) Minimize danger to public health and safety or property;

(b) Require reports are maintained and the keeping of records, and provide for inspections of activities under the license as may be appropriate or necessary; and

(c) Prevent loss or theft of licensed material.

Section 6. Specific Terms and Conditions of Licenses. (1) A license issued pursuant to this administrative regulation shall be subject to the provisions of KRS 211.842 to 211.852, 902 KAR Chapter 100, and orders of the cabinet.

(2) Neither the license nor a right under the license shall be assigned or otherwise transferred in violation of the provisions of KRS 211.842 to 211.852.

(3) A licensee under 902 KAR Chapter 100 shall confine use and possession of the licensed radioactive material to the locations and purposes authorized in the license.

(4) A portable gauge licensee shall use a minimum of two (2) independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, if portable gauges are not under the control and constant surveillance of the licensee.

Section 7. Expiration and Termination of Licenses. (1) Except as specified in subsection (4) of this section and in Section 8 of this administrative regulation, a specific license shall expire at midnight on the day, month, and year stated in the license.

(2) A licensee shall promptly notify the cabinet, in writing, and request termination of the license, if the licensee decides to terminate activities involving licensed materials. This notification and request for termination of the license shall include:

(a) The reports and information specified in subsection (3)(d) and (e) of this section; and

(b) A plan for completion of decommissioning, if required by 902 KAR 100:042 or by license condition.

(3) If a licensee does not submit an application for license renewal under Section 8 of this administrative regulation, the licensee, on or before the expiration date specified in the license, shall:

(a) Terminate use of radioactive material;

(b) Remove radioactive contamination to the extent practicable except for those procedures covered by subsection (4) of this section;

(c) Properly dispose of radioactive material;

(d) File the Disposition of Radioactive Material, "Form RPS-10", with the Cabinet for Health and Family Services; and

(e) If licensed to possess radioactive material with a half-life greater than 120 days in an unsealed form, forward to the cabinet:

1. Records of disposal of radioactive material made pursuant to 902 KAR 100:021, Sections 3-6, including burials authorized before January 28, 1981; and

2. Records required by 902 KAR 100:019, Section 31(2)(d).

(f) If licensed activities are transferred or assigned in accordance with 902 KAR 100:040, Section 6, a licensee authorized to possess radioactive material with a half-life greater than 120 days, in an unsealed form, shall transfer the following records to the new licensee. The new licensee shall be responsible for maintaining these records until the license is terminated:

1. Records of disposal of licensed material made pursuant to 902 KAR 100:021, Sections 3 through 6 of this administrative regulation, including burials authorized before January 28, 1981; and

2. Records required by 902 KAR 100:019, Section 31(2)(d).

(g) Prior to license termination, a licensee shall forward the records required by 902 KAR 100:042, Section 15(3), to the cabinet.

(4) A specific license continues in effect, beyond the expiration date if necessary, with respect to possession of radioactive material until the cabinet notifies the licensee in writing that the license shall be terminated. During this time, the licensee shall:

(a) Limit actions involving radioactive material to those related to decommissioning; and

(b) Continue to control entry to restricted areas until they are suitable for release for unrestricted use and the cabinet notifies the licensee in writing that the license shall be terminated.

~~Section 8. Renewal of License. If a licensee has filed, an application in proper form for renewal or for a new license authorizing the same activities more than thirty (30) days prior to expiration of an existing license, the existing license shall not expire until the application has been finally determined by the cabinet.~~

~~Section 9. Amendment of Licenses. (1) An application for amendment of a license at the request of the licensee shall specify the respects in which the licensee desires the license to be amended and the grounds for the amendment.~~

~~(2) Every five (5) years or at the request of the cabinet, the licensee shall be required to amend the license in its entirety by submitting a complete application.~~

~~Section 10. Cabinet Action on Applications to Renew or Amend. In considering an application by a licensee to renew or amend his license, the cabinet shall apply the requirements of 902 KAR Chapter 100.~~

~~Section 11. Inalienability of Licenses. A license issued or granted under 902 KAR Chapter 100 or right to possess or utilize radioactive material granted by a license issued under 902 KAR Chapter 100 shall not be transferred, assigned, or otherwise disposed of, through transfer of control of a license to a person unless the cabinet, after securing full information, finds that the transfer is in accordance with the requirements of 902 KAR Chapter 100 and gives its consent in writing.~~

~~Section 12. Transfer of Material. (1) A licensee shall not transfer radioactive material except as authorized by this administrative regulation.~~

~~(2) Except as stated in the license and subject to the provisions of subsections (3) and (4) of this section, a licensee may transfer radioactive material subject to the acceptance of the transferee to a person:~~

~~(a) Exempt from the requirements for a license as specified in this administrative regulation to the extent permitted under the exemption;~~

~~(b) Authorized to receive radioactive material under terms of a general license as specified in 902 KAR 100:050, or its equivalent, or a specific license or equivalent licensing document, issued by the cabinet, the U.S. Nuclear Regulatory Commission, or an agreement state;~~

~~(c) Otherwise authorized to receive radioactive material by the federal government or an agency thereof, the cabinet, or an agreement state; or~~

~~(d) As otherwise authorized by the cabinet in writing.~~

~~(3) Before transferring radioactive material to a specific licensee of the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state or to a general licensee who is required to register with the cabinet, U.S. Nuclear Regulatory Commission, or an agreement state prior to receipt of the radioactive material, the licensee transferring the material shall verify that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred.~~

~~(4) The following methods for the verification required by this administrative regulation shall be acceptable:~~

~~(a) The transferor may have in his possession, and read, a current copy of the transferee's specific license or registration certificate;~~

~~(b) The transferor may have in his possession a written certificate by the transferee that he is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date;~~

~~(c) For emergency shipments, the transferor may accept oral certification by the transferee that the transferee is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the~~

~~license or registration certificate number, issuing agency, and expiration date, if the oral certification is confirmed in writing within ten (10) days of the shipment.~~

~~(d) The transferor may obtain other sources of information compiled by a reporting service from official records of the cabinet, the U.S. Nuclear Regulatory Commission, or the licensing agency of an agreement state as to the identity of licensees and the scope and expiration dates of licenses and registration; or~~

~~(e) If none of the methods of verification described in paragraphs (a) through (d) of this subsection are readily available or if a transferor desires to verify that information received by one (1) of the methods is correct or up-to-date, the transferor may obtain and record confirmation from the cabinet, U.S. Nuclear Regulatory Commission, or the licensing agency of an agreement state that the transferee is licensed to receive the radioactive material.~~

~~(5) Shipment and transport of radioactive material shall meet the requirements of 902 KAR Chapter 100.~~

~~Section 13. Modification, Revocation, and Suspension of Licenses. (1) The terms and conditions of a license shall be subject to amendment, revision, or modification, or the license may be suspended or revoked by reason of amendments to or violation of KRS 211.842 to 211.852, 902 KAR Chapter 100, or orders issued by the cabinet.~~

~~(2) A license may be revoked, suspended, or modified, in whole or in part, for:~~

~~(a) A material false statement in the application or in a statement of fact required under provisions of KRS 211.842 to 211.852;~~

~~(b) A condition revealed by application or statement of fact;~~

~~(c) A report, record, or inspection, or other means that would warrant the cabinet to refuse to grant a license on an original application; or~~

~~(d) A violation of, or failure to observe the terms and conditions of KRS 211.842 to 211.852, the license, 902 KAR Chapter 100, or orders of the cabinet.~~

~~(3) Except in a case of willful violation or in which the public health, interest, or safety requires otherwise, a license shall not be modified, suspended, or revoked unless, prior to the institution of proceedings:~~

~~(a) The cabinet shall notify the licensee in writing, according to 902 KAR 1:400, Section 1, of the fact or conduct that may warrant cabinet action on the license.~~

~~(b) The cabinet shall provide the licensee with the opportunity for a conference and conference report according to 902 KAR 1:400, Sections 1 through 3.~~

~~(c) If no conference is requested within the timeframe, the Cabinet shall notify the licensee in writing according to 902 KAR 1:400 Section 2(a)-(c) and Section 3(2) of its final action and the licensee's right to appeal.~~

~~(4) A licensee whose license is suspended or revoked, shall have a right to a hearing under 902 KAR 1:400, Section 4 by, by making a written request as described in that Section.~~

~~Section 14. Retention of Records. (1) A person who receives radioactive material in accordance with a license issued under 902 KAR Chapter 100 shall keep records showing the receipt, transfer, and disposal of radioactive material.~~

~~(2)(a) Records of receipt of radioactive material that are required by subsection (1) of this section shall be maintained as long as the licensee retains possession of the radioactive material and for two (2) years following transfer or disposal of the radioactive material.~~

~~(b) Records of transfer of radioactive material shall be maintained by the licensee who transferred the material for five (5) years after the transfer.~~

~~(c) Records of disposal of radioactive material shall be maintained in accordance with 902 KAR 100:021.~~

~~(3) Other records required by 902 KAR Chapter 100 or by a license condition shall be maintained for the period specified in 902 KAR Chapter 100. If the retention period is not specified by 902 KAR Chapter 100 or a license condition, the records shall be~~

permanently maintained unless the cabinet authorizes disposition upon proper application for destruction.

(4) Records required to be maintained by 902 KAR Chapter 100 shall be:

(a) The original, a reproduced copy, or a microform if duly authenticated by authorized personnel and capable of producing a clear and legible copy after storage for the period specified by 902 KAR Chapter 100; or

(b) In electronic media with the capability for producing legible, accurate, and complete records during the required retention period.

(5) Records, including letters, drawings, and specifications, shall include pertinent authentication stamps, initials, or signatures. The licensee shall maintain adequate safeguards against tampering with, and loss of, records.

Section 15. Reporting Requirements. (1) Immediate report. A licensee shall notify the Cabinet for Health and Family Services, Radiation Health Branch, no later than four (4) hours, after the discovery of an event that prevents or overcomes immediate protective actions necessary to avoid exposure to radiation or radioactive materials or a release of radioactive materials that may exceed regulatory limits. An event includes a fire, explosion, or toxic gas release.

(2) Twenty-four (24) hour report. A licensee shall notify the Cabinet for Health and Family Services, Radiation Health Branch within twenty-four (24) hours after the discovery of an event involving radioactive material, as follows:

(a) An unplanned contamination event that:

1. Requires access to the contaminated area, by workers or the public, to be restricted for more than twenty-four (24) hours by imposing additional radiological controls or by prohibiting entry into the area;

2. Involves a quantity of material greater than five (5) times the lowest annual limit on intake specified in 10 C.F.R. 20, Appendix B, for the material; and

3. Requires access to the area restricted for a reason other than to allow isotopes with a half-life of less than twenty-four (24) hours to decay prior to decontamination;

(b) An event in which equipment is disabled or fails to function as designed, if:

1. The equipment is required by administrative regulation or license condition to prevent a release exceeding regulatory limits, to prevent an exposure to radiation or radioactive material exceeding regulatory limits, or to mitigate the consequences of an accident;

2. The equipment is required to be available and operable if it is disabled or fails to function; and

3. Redundant equipment is not available and operable to perform the required safety function;

(c) An event that requires unplanned medical treatment, at a medical facility, of an individual with spreadable radioactive contamination on the individual's clothing or body; or

(d) An unplanned fire or explosion damaging radioactive material or a device, container, or equipment containing radioactive material, if:

1. The quantity of material involved is greater than five (5) times the lowest annual limit on intake specified in 10 C.F.R. 20, Appendix B, for the radioactive material; and

2. The damage affects the integrity of the radioactive material or its container.

(3) A report by a licensee in response to the requirements of this section shall be made as follows:

(a) A licensee shall make a report as required by subsections (1) and (2) of this section by telephone to the Cabinet for Health and Family Services, Radiation Health Branch at (502) 564-3700 from 8 a.m. 4:30 p.m. Eastern Time Monday through Friday, or at (800) 255-2587 at other hours. To the extent that the information is available at the time of notification, the information provided in these reports shall include:

1. The caller's name and call back telephone number;

2. A description of the event, including date and time;

3. The exact location of the event;

4. The isotopes, quantities, and chemical and physical form of the radioactive material involved; and

5. Available personnel radiation exposure data.

(b) A licensee who makes a telephone report shall submit a written follow-up report within thirty (30) days of the initial report. A written report prepared pursuant to another administrative regulation of 902 KAR Chapter 100 may be submitted to fulfill this requirement, if the report contains the necessary information and the appropriate distribution is made. The report shall be sent to the Manager, Radiation Health Branch, 275 East Main Street, Frankfort, Kentucky 40621. The report shall include the following:

1. A description of the event, including the probable cause and the manufacturer and model number, if applicable, of equipment that failed or malfunctioned;

2. The exact location of the event;

3. The isotopes, quantities, and chemical and physical form of the radioactive material involved;

4. Date and time of the event;

5. Corrective actions taken or planned and results of evaluations or assessments; and

6. The extent of every exposure of every individual to radiation or to a radioactive material, without identification of any individual by name.

Section 16. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) Cabinet for Health and Family Services Form RPS-7 "Application for Radioactive Material License", 6/2011;

(b) Cabinet for Health and Family Services Form RPS-10 "Disposition of Radioactive Material" 3/2011; and

(c) "Annual Low Level Radioactive Waste (LLRW) Report", 3/2011.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Commissioner of Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.]

STEVEN J. STACK, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 7, 2023

FILED WITH LRC: June 12, 2023 at 12:35 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2023, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by August 14, 2023, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2023. 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

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the general licensing requirements for certain uses of radioactive material and specific devices containing radioactive material.

(b) The necessity of this administrative regulation: This administrative regulation identifies alternate licensing criteria for lower activities and specific uses of radioactive materials.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect the health of the individual citizens of the commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.844(1) requires the cabinet to promulgate administrative regulations for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and to regulate the handling and disposal of radioactive waste.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures all those engaged in the licensing, use, transfer, and disposal of radioactive source material meet the regulatory 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 to this administrative regulation adopts by reference the requirements of 10 C.F.R. Part 30.

(b) The necessity of the amendment to this administrative regulation: As an agreement state with the Nuclear Regulatory Commission (NRC), Kentucky is required to have state regulations compatible with the regulations promulgated by NRC. This change will make the Radiation Health Branch (RHB) compatible with applicable requirements of 10 C.F.R. Part 30.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.842(1) and (2) establish the cabinet as the radiation control agency of the state of Kentucky and authorize the cabinet to issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation ensures all licensees who have a general license for certain uses of radioactive material and specific devices containing radioactive material are in full compliance with state and federal requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 118 licenses issued for certain uses of radioactive material and specific devices containing radioactive material.

(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 will be needed by the licensee to comply 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): There is minimal cost to the cabinet associated with updating references.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Adopting 10 C.F.R. Part 30 by reference will reduce the redundancy between state and federal requirements. This will reduce the time needed to research applicable regulations and make it easier for the licensee to review existing guidance documents.

(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 will be no impact to cost.

(b) On a continuing basis: There is no anticipated increase in costs associated with this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Radiation Health Branch is funded through a mix of state general fund dollars and the various fees associated with issuing licenses.

(7) Provide an assessment of whether an 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 needed 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 associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied. The requirements of this administrative regulation are applied equally to all licensees.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Radiation Health Branch within the Department for Public Health 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) and 211.844.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 does not add cost to the agency.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation does not add cost to the agency.

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 may result in minimal cost savings for the regulated entities. The amendment to this administrative regulation reduces the administrative burden of having to research and follow duplicative state and federal requirements.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation may result in minimal cost savings for the regulated entities. The amendment to this administrative regulation reduces the administrative burden of having to research and follow duplicative state and federal requirements.

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

year? This administrative regulation will have no impact on cost for the regulated entities.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation will have no impact on cost for 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 (+/-):

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. Atomic Energy Act of 1954, 42 U.S.C. 2021, as amended, and 10 C.F.R. Part 30.

(2) State compliance standards. As an agreement state with the Nuclear Regulatory Commission the state is required to have a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the state covered by the proposed agreement. The state is required to adopt compliance standards for the protection of the public health, safety, and the environment from hazards associated with such material which are equivalent, to the extent practicable, or more stringent than, standards adopted and enforced by the Commission for the same purpose.

(3) Minimum or uniform standards contained in the federal mandate. In accordance with 42 U.S.C. 2021(g), the commission is authorized and directed to cooperate with the states in the formulation of standards for protection against hazards of radiation to assure that state and commission programs for protection against hazards of radiation will be coordinated and compatible. Pursuant to 42 U.S.C. 2021(a)(3) the purpose of this standard is to promote orderly regulatory pattern between the commission and state governments with respect to nuclear development and use and regulation of byproduct, source, and special nuclear materials.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable as there are no stricter standards, or additional or different responsibilities or requirements.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Public Health Protection and Safety (Amendment)

902 KAR 100:050. General licenses.

RELATES TO: KRS 194A.005, 211.842-211.852, 211.990(4), 10 C.F.R. Part 31, 42 U.S.C. 2021

STATUTORY AUTHORITY: KRS 194A.050(1), [211.990, 211.844]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate, administrative regulations necessary to implement programs mandated by federal law, to qualify for the receipt of federal funds, and to cooperate with other state and federal agencies. KRS 211.844 authorizes the cabinet [for Human Resources is empowered by KRS 211.844] to provide by regulation for the registration and licensing of the

possession or use of any source of ionizing or electronic product radiation and the handling and disposal of radioactive waste. [The purpose of.] This administrative regulation establishes [is to provide for] the general licensing requirements for [of] certain uses of radioactive material and specific devices containing radioactive material.

Section 1. Definitions. (1) "Agreement state" means a state that the United States Nuclear Regulatory Commission (NRC) or the United States Atomic Energy Commission has entered into an effective agreement under subsection 274 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(b) et seq.).

(2) "Cabinet" is defined by KRS 194A.005(1).

(3) "Licensee" means a person who holds:

(a) A specific license issued by the cabinet pursuant to 902 KAR 100:040 and this administrative regulation;

(b) A specific license issued by the U.S. Nuclear Regulatory Commission or an agreement state; or

(c) A general license pursuant to this administrative regulation or equivalent regulations of the U.S. Nuclear Regulatory Commission or an agreement state.

Section 2. Applicability. [The provisions of.] This administrative regulation establishes the requirements for licensees [apply to persons] who manufacture or use radioactive material under a general license. Except as established in subsections (1) through (4) of this section, the licensee shall comply with 10 C.F.R. Part 31.

(1) The licensee shall not be subject to:

(a) 10 C.F.R. 31.4;

(b) 10 C.F.R. 31.22; or

(c) 10 C.F.R. 31.23.

(2) Application for specific license. Each application for a specific license shall be filed pursuant to 902 KAR 100:040.

(3) Reference to the NRC, Commission, or an agreement state shall be deemed to reference the Cabinet for Health and Family Services, Department for Public Health, Radiation Health Branch, the NRC, or an agreement state.

(4) Notifications and reports required by 10 C.F.R. Part 31 shall be directed to the manager, Radiation Health Branch at:

(a) 275 East Main Street, Mailstop HS1-C-A, Frankfort, Kentucky 40621;

(b) (502) 564-1492; Facsimile;

(c) (502) 564-3700: Telephone, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(d) (800) 225-2587: Telephone, for hours except those established in paragraph (c) of this subsection, [as provided under this administrative regulation.

Section 2. General Licenses; Source Material. (1) A general license is hereby issued authorizing commercial and industrial firms, research, educational and medical institutions, and state and local government agencies to use and transfer not more than fifteen (15) pounds of source material at any time for research, development, educational, commercial, or operational purposes. A person authorized to use or transfer source material pursuant to this general license may not receive more than a total of 150 pounds of source material in any one (1) calendar year:

(2) Persons who receive, possess, use or transfer source material pursuant to the general license issued in subsection (1) of this section are exempt from the provisions of these administrative regulations to the extent that such receipt, possession, use, or transfer is within the terms of such general license; provided, however, that this exemption shall not be deemed to apply to any person who is also in possession of source material under a specific license issued pursuant to these administrative regulations.

(3) A general license is hereby issued authorizing the receipt of title of source material without regard to quantity. The general license under this subsection does not authorize any person to receive, possess, use, or transfer source material.

(4) Depleted uranium in industrial products and devices.

(a) A general license is hereby issued to receive, acquire, possess, use, or transfer, in accordance with the provisions of this

subsection, depleted uranium contained in industrial products or devices for the purpose of providing a concentrated mass in a small volume of the product or device.

(b) The general license applies only to industrial products or devices which have been manufactured either in accordance with a specific license issued to the manufacturer of the products or devices pursuant to 902 KAR 100:058 or in accordance with a specific license issued to the manufacturer by the U.S. Nuclear Regulatory Commission or an Agreement State which authorizes manufacture of the products or devices for distribution to persons generally licensed by the U.S. Nuclear Regulatory Commission or an Agreement State.

(c)1. Persons who receive, acquire, possess, or use depleted uranium pursuant to this general license shall notify the cabinet. The notification shall be submitted within thirty (30) days after the first receipt or acquisition of such depleted uranium. The general licensee shall furnish the following information and such other information as may be required:

a. Name and address of the general licensee;

b. A statement that the general licensee has developed and will maintain procedures designed to establish physical control over the depleted uranium and designed to prevent transfer of such depleted uranium in any form, including metal scrap, to persons not authorized to receive the depleted uranium; and

c. Name and/or title, address, and telephone number of the individual duly authorized to act for and on behalf of the general licensee in supervising the procedures.

2. The general licensee possessing or using depleted uranium under this general license shall report in writing to the cabinet any changes in information furnished by the notification. The report shall be submitted within thirty (30) days after the effective date of such change.

(d) A person who receives, acquires, possesses, or uses depleted uranium pursuant to the general license established by paragraph (a) of this subsection;

1. Shall not introduce such depleted uranium, in any form, into a chemical, physical, or metallurgical treatment or process except a treatment or process for repair or restoration of any plating or other covering of the depleted uranium;

2. Shall not abandon such depleted uranium;

3. Shall transfer or dispose of such depleted uranium only by transfer in accordance with the provisions of 902 KAR 100:040. In the case where the transferee receives the depleted uranium pursuant to the general license established by this subsection, the transferor shall furnish the transferee a copy of this administrative regulation. In the case where the transferee receives the depleted uranium pursuant to a general license contained in the U.S. Nuclear Regulatory Commission's or Agreement State's regulation equivalent, the transferor shall furnish the transferee a copy of this administrative regulation accompanied by a note explaining that use of the product or device is regulated by the U.S. Nuclear Regulatory Commission or Agreement State under requirements substantially the same as those in this administrative regulation;

4. Within thirty (30) days of any transfer, shall report in writing to the cabinet the name and address of the person receiving the depleted uranium pursuant to such transfer; and

5. Shall not export such depleted uranium except in accordance with a license issued by the U.S. Nuclear Regulatory Commission pursuant to 10 CFR Part 110.

(e) Any person receiving, acquiring, possessing, using, or transferring depleted uranium pursuant to the general license established by this subsection is exempt from the requirements of 902 KAR 100:020 and 902 KAR 100:165 of these administrative regulations with respect to the depleted uranium covered by that general license.

Section 3. General Licenses; Radioactive Material Other than Source Material. (1) A general license is hereby issued to transfer, receive, acquire, own, possess, and use radioactive material incorporated in the following devices or equipment which have been manufactured, tested and labeled by the manufacturer in accordance with a specific license issued to the manufacturer by the U.S. Nuclear Regulatory Commission for use pursuant to 10

CFR Part 31.3;

(a) Static elimination device. Devices designed for use as static eliminators which contain, as a sealed source or sources, radioactive material consisting of a total of not more than 500 microcuries of polonium-210 per device; and

(b) Ion-generating tube. Devices designed for ionization of air which contain, as a sealed source or sources, radioactive material consisting of a total of not more than 500 microcuries of polonium-210 per device or a total of not more than fifty (50) millicuries of hydrogen-3 (tritium) per device.

(2) The general license provided in subsection (1) of this section is subject to all applicable provisions of these administrative regulations including provisions relating to the labeling of containers.

(3) Certain measuring, gauging or controlling devices.

(a) A general license is hereby issued to commercial, and industrial firms and to research, educational and medical institutions, individuals in the conduct of their business, and state or local government agencies to own, receive, acquire, possess, use or transfer in accordance with the provisions of this subsection, radioactive material, excluding special nuclear material, contained in devices designed and manufactured for the purpose of detecting, measuring, gauging or controlling thickness, density, level, interface location, radiation, leakage, or qualitative or quantitative chemical composition, or for producing light or an ionized atmosphere.

(b) The general license in this subsection applies only to radioactive material contained in devices which have been manufactured and labeled in accordance with the specifications contained in a specific license issued by the cabinet pursuant to 902 KAR 100:058 or in accordance with the specifications contained in a specific license issued by the U.S. Nuclear Regulatory Commission or an Agreement State which authorizes distribution of devices to persons generally licensed by the U.S. Nuclear Regulatory Commission or an Agreement State. Regulations under the Federal Food, Drug, and Cosmetic Act authorizing the use of radioactive control devices in food production require certain additional labeling thereon which is found in 21 CFR Part 179.21.

(c) Any person who owns, receive, acquires, possesses, uses, or transfers radioactive material in a device pursuant to the general license in this subsection:

1. Shall assure that all labels affixed to the device at the time of receipt, and bearing a statement that removal of the label is prohibited, are maintained thereon and shall comply with all instructions and precautions provided by such labels;

2. Shall assure that the device is tested for leakage of radioactive material and proper operation of the "on-off" mechanism and indicator, if any, at no longer than six (6) month intervals or at such other intervals as are specified in the label; however,

a. Devices containing only krypton need not be tested for leakage of radioactive material, and

b. Devices containing only tritium or not more than 100 microcuries of other beta and/or gamma-emitting material or ten (10) microcuries of alpha-emitting material and devices held in storage in the original shipping container prior to initial installation need not be tested for any purpose;

3. Shall assure that other testing, installation, servicing, and removal from installation involving the radioactive material, its shielding or containment, are performed:

a. In accordance with the instructions provided by the labels; or

b. By a person holding an applicable specific license from the cabinet, the U.S. Nuclear Regulatory Commission or an Agreement State to perform such activities;

4. Shall maintain records showing compliance with the requirements of this subsection. The records shall show the results of tests. The records also shall show the names of persons and dates of performance of testing, installation, servicing, and removal from installation concerning the radioactive material, its shielding or containment. Records of tests for leakage of radioactive material shall be maintained for one (1) year after the next required leak test is performed or until the sealed source is transferred or

disposed. Records of tests of the "on-off" mechanism and indicator shall be maintained for one (1) year after the next required test of the "on-off" mechanism and indicator is performed or until the sealed source is transferred or disposed. Records which are required by subparagraph 3 of this paragraph shall be maintained for a period of two (2) years from the date of the recorded event or until the device is transferred or disposed;

5. Upon the occurrence of a failure of or damage to, or any indication of a possible failure of or damage to, the shielding of the radioactive material or the "on-off" mechanism or indicator, or upon the detection of 0.005 microcurie or more removable radioactive material, shall immediately suspend operation of the device until it has been repaired by the manufacturer or other person holding an applicable specific license from the cabinet, the U.S. Nuclear Regulatory Commission or an Agreement State to repair such devices, or disposed of by transfer to a person authorized by an applicable specific license to receive the radioactive material contained in the device and, within thirty (30) days, furnish to the cabinet a report containing a brief description of the event and the remedial action taken;

6. Shall not abandon the device containing radioactive material;

7. Except as provided in subparagraph 8 of this paragraph, shall transfer or dispose of the device containing radioactive material only by transfer to a specific licensee of the cabinet, the U.S. Nuclear Regulatory Commission or an Agreement State whose specific license authorizes him to receive the device and within thirty (30) days after transfer of a device to a specific licensee shall furnish to the cabinet a report containing identification of the device by manufacturer's name and model number and the name and address of the person receiving the device. No report is required if the device is transferred to the specific licensee in order to obtain a replacement device;

8. Shall transfer the device to another general licensee only:

a. Where the device remains in use at a particular location. In such case the transferor shall give the transferee a copy of this administrative regulation and any safety documents identified in the label on the device and within thirty (30) days of the transfer, report to the cabinet the manufacturer's name and model number of device transferred, the name and address of the transferee, and the name and/or position of an individual who may constitute a point of contact between the cabinet and the transferee; or

b. Where the device is held in storage in the original shipping container at its intended location of use prior to initial use by a general licensee; and

9. Shall comply with the provisions of 902 KAR 100:020 for reporting radiation incidents, theft, or loss of licensed material, but shall be exempt from the other requirements of 902 KAR 100:020 and 902 KAR 100:165.

(d) The general license in this subsection does not authorize the manufacture of devices containing radioactive material.

(e) The general license provided in this subsection is subject to the provisions of 902 KAR 100:012, 902 KAR 100:015, 902 KAR 100:040, Sections 7, 13 and 14 and 902 KAR 100:070.

(f) A general license is hereby issued to any person who holds a specific license issued by the U.S. Nuclear Regulatory Commission or an Agreement State authorizing the holder to manufacture, install, or service a device described in this subsection to install and service such device provided:

1. The device has been manufactured, labeled, installed, and serviced in accordance with applicable provisions of the specific license issued to such person by the U.S. Nuclear Regulatory Commission or an Agreement State; and

2. Such person assures that any labels required to be affixed to the device under regulations of U.S. Nuclear Regulatory Commission or an Agreement State which licensed manufacture of the device bear a statement that removal of the label is prohibited.

(4) Luminous safety devices for aircraft.

(a) A general license is hereby issued to own, receive, acquire, possess, and use tritium or promethium-147 contained in luminous safety devices for use in aircraft, provided:

1. Each device contains not more than ten (10) curies of tritium or 300 millicuries of promethium-147; and

2. Each device has been manufactured, assembled, or imported in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission, or each device has been manufactured or assembled in accordance with the specifications contained in a specific license issued by the cabinet or any Agreement State to the manufacturer or assembler of such device pursuant to licensing requirements equivalent to those in Section 32.53 of 10 CFR, Part 32, of the regulations of the U.S. Nuclear Regulatory Commission.

(b) Persons who own, receive, acquire, possess, or use luminous safety devices pursuant to the general license in paragraph (a) of this subsection are exempt from the requirements of 902 KAR 100:020 and 902 KAR 100:165 except that they shall comply with the provisions relating to reports of theft or loss of sources of radiation and the provisions relating to notification of incidents.

(c) This general license does not authorize the manufacture, assembly, or repair of luminous safety devices containing tritium or promethium-147.

(d) This general license does not authorize the ownership, receipt, acquisition, possession or use of promethium-147 contained in instrument dials.

(e) This general license is subject to the provisions of 902 KAR 100:015, 902 KAR 100:040, Sections 7, 13, and 14 and 902 KAR 100:070.

(5) Calibration and reference sources.

(a) A general license is hereby issued to those persons listed below to own, receive, acquire, possess, use, and transfer, in accordance with the provisions of paragraphs (d) and (e) of this subsection, americium-241 in the form of calibration or reference sources:

1. Any person who holds a specific license issued by the cabinet which authorizes him to receive, possess, use, and transfer radioactive material; and

2. Any person who holds a specific license issued by the U.S. Nuclear Regulatory Commission which authorizes him to receive, possess, use, and transfer special nuclear material.

(b) A general license is hereby issued to receive, possess, use, and transfer plutonium in the form of calibration or reference sources in accordance with the provisions of paragraphs (d) and (e) of this subsection to any person who holds a specific license issued by the cabinet which authorizes him to receive, possess, use, and transfer radioactive material.

(c) A general license is hereby issued to own, receive, possess, use, and transfer radium-226 in the form of calibration or reference sources in accordance with the provisions of paragraphs (d) and (e) of this subsection to any person who holds a specific license issued by the cabinet which authorizes him to receive, possess, use, and transfer radioactive material.

(d) The general license in paragraphs (a), (b) and (c) of this subsection apply only to calibration or reference sources which have been manufactured in accordance with the specifications contained in a specific license issued to the manufacturer or importer of the sources by the U.S. Nuclear Regulatory Commission pursuant to Section 32.57 of 10 CFR, Part 32, or Section 70.39 of 10 CFR, Part 70, or which may have been manufactured in accordance with the specifications contained in a specific license issued to the manufacturer by the cabinet or any Agreement State pursuant to licensing requirements equivalent to those contained in 902 KAR 100:058.

(e) Persons who own, receive, acquire, possess, use, and transfer one (1) or more calibration or reference sources pursuant to these general licenses:

1. Shall not possess at any one (1) time, at any one (1) location of storage or use, more than five (5) microcuries of americium-241, five (5) microcuries of plutonium or five (5) microcuries of radium-226 in such sources;

2. Shall not receive, possess, use, or transfer such source unless the source, or the storage container, bears a label which includes the following statement or a substantially similar statement which contains the information called for in the following statement:

"The receipt, possession, use and transfer of this source,

Model _____, Serial No. _____, are subject to a general license and the regulations of the U.S. Nuclear Regulatory Commission or of a state with which the Commission has entered into an agreement for the exercise of regulatory authority. Do not remove this label.

~~CAUTION - RADIOACTIVE MATERIAL - THIS SOURCE CONTAINS (AMERICIUM-241). (PLUTONIUM) (RADIUM-226)*. DO NOT TOUCH RADIOACTIVE PORTION OF THIS SOURCE.~~

Name of Manufacturer or Importer"

*Showing only the name of the appropriate material.

3. Shall not transfer, abandon, or dispose of such source except by transfer to a person authorized by a license from the cabinet, U.S. Nuclear Regulatory Commission, or an Agreement State to receive the source;

4. Shall store such source, except when the source is being used, in a closed container adequately designed and constructed to contain americium-241, plutonium or radium-226 which might otherwise escape during storage; and

5. Shall not use such source for any purpose other than the calibration of radiation detectors or the standardization of other sources.

(f) The general licenses provided in paragraphs (a), (b) and (c) of this subsection are subject to the provisions of 902 KAR 100:015, 902 KAR 100:020, 902 KAR 100:040, Sections 7, 13, and 14, 902 KAR 100:070, and 902 KAR 100:165.

(g) These general licenses do not authorize the manufacture of calibration or reference sources containing americium-241, plutonium, or radium-226.

(6) A general license is hereby issued to own radioactive material without regard to quantity. The general license under this subsection does not authorize the licensee to manufacture, produce, transfer, receive, possess, or use radioactive material.

(7) Ice detection devices:

(a) A general license is hereby issued to own, receive, acquire, possess, use, and transfer strontium-90 contained in ice detection devices, provided each device contains not more than fifty (50) microcuries of strontium-90 and each device has been manufactured or imported in accordance with a specific license, issued by the U.S. Nuclear Regulatory Commission or each device has been manufactured in accordance with the specifications contained in a specific license issued by the cabinet or any Agreement State to the manufacturer of such device pursuant to licensing requirements equivalent to those in 902 KAR 100:058.

(b) Persons who own, receive, acquire, possess, use, or transfer strontium-90 contained in ice detection devices pursuant to the general license in paragraph (a) of this subsection:

1. Shall, upon occurrence of visually observable damage, such as a bend or crack or discoloration from overheating to the device, discontinue use of the device until it has been inspected, tested for leakage, and repaired by a person holding a specific license from the cabinet, U.S. Nuclear Regulatory Commission or an Agreement State to manufacture or service such devices; or shall dispose of the device pursuant to the provisions of these administrative regulations;

2. Shall assure that all labels affixed to the device at the time of receipt, and which bear a statement which prohibits removal of the labels, are maintained thereon;

3. Are exempt from the other requirements of these administrative regulations except that such persons shall comply with 902 KAR 100:015, 902 KAR 100:020, Sections 16 and 17, 902 KAR 100:021, 902 KAR 100:040, Sections 7, 13, and 14 and 902 KAR 100:070.

(c) This general license does not authorize the manufacture, assembly, disassembly or repair of strontium-90 sources in ice detection devices.

Section 4. General License for use of Radioactive Material for Certain In Vitro Clinical or Laboratory Testing. (1) A general license is hereby issued to any physician, veterinarian, clinical laboratory, or hospital to receive, acquire, possess, transfer or use, for any of the following stated tests, in accordance with the provisions of

subsections (2), (3), (4), (5), and (6) of this section, the following radioactive materials in prepackaged units for use in In Vitro clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation therefrom, to human beings or animals:

(a) Iodine-125, in units not exceeding ten (10) microcuries each.

(b) Iodine-131, in units not exceeding ten (10) microcuries each.

(c) Carbon-14, in units not exceeding ten (10) microcuries each.

(d) Hydrogen-3 (Tritium), in units not exceeding fifty (50) microcuries each.

(e) Iron-59, in units not exceeding twenty (20) microcuries each.

(f) Cobalt-57, in units not exceeding ten (10) microcuries each.

(g) Mock iodine-125 reference or calibration sources, in units not exceeding 0.05 microcurie of iodine-29 and 0.005 microcurie of americium-241 each.

(h) Selenium-75, in units not exceeding ten (10) microcuries each.

(2) No person shall receive, acquire, possess, use or transfer radioactive material pursuant to the general license established by subsection (1) of this section until he has filed form KR-251, "Registration Certificate - In Vitro Testing" with the cabinet and received from the cabinet a validated copy of form KR-251 with certification number assigned. The physician, veterinarian, clinical laboratory, or hospital shall furnish on form KR-251, the following information and such other information as may be required by that form:

(a) Name and address of the physician, veterinarian, clinical laboratory, or hospital;

(b) The location of use; and

(c) A statement that the physician, veterinarian, clinical laboratory, or hospital has appropriate radiation measuring instruments to carry out in vitro clinical or laboratory tests with radioactive materials as authorized under the general license in subsection (1) of this section and that such tests will be performed only by personnel competent in the use of such instruments and in the handling of the radioactive material.

(3) A person who receives, acquires, possesses or uses radioactive material pursuant to the general license established by subsection (1) of this section shall comply with the following:

(a) The general licensee shall not possess at any one (1) time, pursuant to the general license in subsection (1) of this section, at any one (1) location of storage or use, a total amount of iodine-125, iodine-131, selenium-75, cobalt-57 and/or iron-59 in excess of 200 microcuries.

(b) The general licensee shall store the radioactive material, until used, in the original shipping container or in a container providing equivalent radiation protection.

(c) The general licensee shall use the radioactive material only for the uses authorized by subsection (1) of this section.

(d) The general licensee shall not transfer the radioactive material to a person who is not authorized to receive it pursuant to a license issued by the cabinet, the U.S. Nuclear Regulatory Commission, or any Agreement State, nor transfer the radioactive material in any manner other than in the unopened, labeled shipping container as received from the supplier.

(e) The general licensee shall dispose of the Mock iodine-125 reference or calibration sources as required by 902 KAR 100:021, Section 2.

(4) The general licensee shall not receive, acquire, possess, or use radioactive material pursuant to subsection (1) of this section:

(a) Except as prepackaged units which are labeled in accordance with the provisions of a specific license issued under these administrative regulations or in accordance with the provisions of an applicable specific license issued pursuant to 902 KAR 100:058 or in accordance with the provisions of a specific license issued by the U.S. Nuclear Regulatory Commission, or any Agreement State which authorizes the manufacture and distribution of iodine-125, iodine-131, carbon-14, hydrogen-3 (tritium), selenium-75, cobalt-57, Mock iodine-125 or iron-59 to

persons generally licensed under subsection (1) of this section or its equivalent;

(b) Unless the following statement, or a substantially similar statement which contains the information called for in the following statement, appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure which accompanies the package:

"This radioactive material may be received, acquired, possessed, and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of the U.S. Nuclear Regulatory Commission or of a state with which the commission has entered into an agreement for the exercise of regulatory authority.

Name of Manufacturer

(5) The physician, veterinarian, clinical laboratory, or hospital possessing or using radioactive material under the general license of subsection (1) of this section shall report in writing to the cabinet, any changes in the information furnished by him in the "Registration Certificate – In Vitro Testing," form KR-251. The report shall be furnished within thirty (30) days after the effective date of such change.

(6) Any person using radioactive material pursuant to the general license of subsection (1) of this section is exempt from the requirements 902 KAR 100:020, 902 KAR 100:021, and 902 KAR 100:165, except that such person using the Mock-iodine 125 shall comply with the provisions of 902 KAR 100:020, Sections 16 and 17 and 902 KAR 100:021.

(7) Any licensee who is licensed pursuant to 902 KAR 100:073 for medical use of radioactive material also is authorized to use radioactive material under the general license in this section for the specified in vitro uses without filing form KR-251 as required; provided, that the licensee is subject to the other provisions of this section.

Section 5. General License for Medical Diagnostic Uses. (1) A general license is hereby issued to any physician to receive, possess, transfer, or use radioactive material set forth below for the stated diagnostic uses, provided, however, that the use is in accordance with the provisions of subsections (2), (3), and (4) of this section, the radioactive material is in the form of capsules, disposable syringes, or other prepackaged individual doses; and the radioactive material has been manufactured in accordance with a specific license issued by the cabinet pursuant to 902 KAR 100:058, or by the U.S. Nuclear Regulatory Commission or any Agreement State pursuant to equivalent regulations authorizing distribution to persons generally licensed pursuant to this subsection or its equivalent:

(a) Iodine-131 as sodium iodide for measurement of thyroid uptake;

(b) Iodine-131 as iodinated human serum albumin (IHSA) for determinations of blood and blood plasma volume;

(c) Iodine-125 as iodinated human serum albumin (IHSA) for determinations of blood and blood plasma volume;

(d) Cobalt-57 for the measurement of intestinal absorption of cyanocobalamin;

(e) Cobalt-58 for the measurement of intestinal absorption of cyanocobalamin;

(f) Cobalt-60 for the measurement of intestinal absorption of cyanocobalamin;

(g) Chromium-51 as sodium radiochromate for determination of red blood cell volumes and studies of red blood cell survival time.

(2) Manufacturers of radiopharmaceuticals which are under a general license shall affix a certain identifying label to the container or in the leaflet or brochure which accompanies the radiopharmaceutical as otherwise provided in these administrative regulations.

(3) No physician shall receive, possess, use, or transfer radioactive material pursuant to the general license established by subsection (1) of this section until he has filed form KR-252, "Registration Certificate – Medical Use of Radioactive Material" with

the cabinet and received from the cabinet a validated copy of the form KR-252 with certification number assigned. The generally licensed physician shall furnish on form KR-252 the following information and such other information as may be required by that form:

(a) Name and address of the generally licensed physician;

(b) A statement that the generally licensed physician is a duly licensed physician authorized to dispense drugs in the practice of medicine in the state of Kentucky and specifying the license number; and

(c) A statement that the generally licensed physician has appropriate radiation measuring instruments to carry out the diagnostic procedures for which he proposes to use the radioactive material under the general license of this section and that he is competent in the use of such instruments.

(4) A physician who receives, possesses or uses a pharmaceutical containing radioactive material pursuant to the general license established by subsection (1) of this section shall comply with the following:

(a) He shall not possess at any one time pursuant to the general license in subsection (1) of this section more than:

1. 200 microcuries of iodine-131;
2. 200 microcuries of iodine-125;
3. Five (5) microcuries of cobalt-57;
4. Five (5) microcuries of cobalt-60;
5. Five (5) microcuries of cobalt-58; and
6. 200 microcuries of chromium-51.

(b) He shall store the pharmaceutical, until administered, in the original shipping container or a container providing the equivalent radiation protection.

(c) He shall use the pharmaceutical only for the uses authorized by subsection (1) of this section.

(d) He shall not administer the pharmaceutical to a woman with confirmed pregnancy or to a person under eighteen (18) years of age.

(e) He shall not transfer the radioactive material to a person who is not authorized to receive it pursuant to a license issued by the cabinet, the U.S. Nuclear Regulatory Commission or any Agreement State, or in any manner other than in the unopened, labeled shipping container as received from the supplier, except by administering it to a patient.

(5) The generally licensed physician possessing or using radioactive material under the general license of subsection (1) of this section shall report to the cabinet, any changes in the information furnished by him in the "Registration Certificate – Medical Use of Radioactive Material," form KR-252. The report shall be submitted within thirty (30) days after the effective date of change.

(6) Any person using radioactive material pursuant to the general license of subsection (1) of this section is exempt from the requirements of 902 KAR 100:020, 902 KAR 100:021 and 902 KAR 100:165.]

STEVEN J. STACK, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 7, 2023

FILED WITH LRC: June 12, 2023 at 12:35 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested be held on August 21, 2023, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by August 14, 2023, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2023. 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

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the general licensing requirements for certain uses of radioactive material and specific devices containing radioactive material.

(b) The necessity of this administrative regulation: This administrative regulation identifies alternate licensing criteria for lower activities and specific uses of radioactive materials.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.844 requires the cabinet to provide by administrative regulation the requirements for the licensing, use, and disposal of radioactive materials.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures all those engaged in the licensing, use, transfer, and disposal of radioactive source material meet the regulatory 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 to this administrative regulation adopts by reference the requirements of 10 C.F.R. Part 31.

(b) The necessity of the amendment to this administrative regulation: As an agreement state with the Nuclear Regulatory Commission (NRC), Kentucky is required to have state regulations compatible with the regulations promulgated by NRC. This change will make the Radiation Health Branch (RHB) compatible with applicable requirements of 10 C.F.R. Part 31.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.842(1) and (2) establish the cabinet as the radiation control agency of the state of Kentucky and authorize the cabinet to issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation ensures all licensees who have a general license for certain uses of radioactive material and specific devices containing radioactive material are in full compliance with state and federal requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 118 licenses issued for certain uses of radioactive material and specific devices containing radioactive material.

(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 will be needed by the licensee to comply 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): There is a minimal cost to the cabinet associated with updating references.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Adopting 10 C.F.R. Part 31 by

reference will reduce the redundancy between state and federal requirements. This will reduce the time needed to research applicable regulations and make it easier for the licensee to review existing guidance documents.

(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: This administrative regulation does not impact costs for the agency.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Radiation Health Branch is funded through a mix of state general fund dollars and the various fees associated with issuing licenses.

(7) Provide an assessment of whether an 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 needed 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 associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied. The requirements of this administrative regulation are applied equally to all licensees.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Radiation Health Branch within the Department for Public Health 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) and 211.844.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 is no impact on cost to the agency.

(d) How much will it cost to administer this program for subsequent years? There is no impact to cost to the agency.

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 may result in minimal cost savings for the regulated entities. The amendment to this administrative regulation reduces the administrative burden of having to research and follow duplicative state and federal requirements.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation may result in minimal cost savings for the regulated entities. The amendment to this administrative regulation reduces the administrative burden of having to research and follow

duplicative state and federal requirements.

(c) How much will it cost the regulated entities for the first year? This administrative regulation will have no impact on cost for the regulated entities.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation will have no impact on cost for 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 (+/-):

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. Atomic Energy Act of 1954, 42 U.S.C. 2021, as amended, and 10 C.F.R. Part 31.

(2) State compliance standards. As an agreement state with the Nuclear Regulatory Commission the state is required to have a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the state covered by the proposed agreement. The state is required to adopt compliance standards for the protection of the public health, safety, and the environment from hazards associated with such material which are equivalent, to the extent practicable, or more stringent than, standards adopted and enforced by the Commission for the same purpose.

(3) Minimum or uniform standards contained in the federal mandate. In accordance with 42 U.S.C. 2021(g), the commission is authorized and directed to cooperate with the states in the formulation of standards for protection against hazards of radiation to assure that state and commission programs for protection against hazards of radiation will be coordinated and compatible. Pursuant to 42 U.S.C. 2021(a)(3) the purpose of this standard is to promote orderly regulatory pattern between the commission and state governments with respect to nuclear development and use and regulation of byproduct, source, and special nuclear materials.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable as there are no stricter standards, or additional or different responsibilities or requirements.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Public Health Protection and Safety

(Amendment)

902 KAR 100:058. Specific licenses to manufacture, assemble, repair, or distribute products.

RELATES TO: KRS 194A.005, 211.842-211.852, 211.990(4), 10 C.F.R. Part 32, 42 U.S.C. 2021(b)(31-5, 32.2(b)), 32.11, 32.18, 32.19, 32.26, 32.51 - 32.74, 32.101 - 32.103, 32.110, 32.210, 40.34, 40.35, 70.39]

STATUTORY AUTHORITY: KRS 13B.170, 194A.050(1), [211.090(3), 211.844

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 implement programs mandated by federal law, to qualify for the receipt of federal funds, and to cooperate with other state and federal agencies. KRS 211.844 requires the cabinet [for Health and Family Services] to promulgate administrative regulations concerning the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. [KRS 194A.050 authorizes 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.] This administrative regulation establishes requirements for issuing specific licenses to persons who manufacture, assemble, repair, or distribute commodities, products, or devices, that contain radioactive material.

Section 1. Definitions. (1) "Agreement state" means a state that the United States Nuclear Regulatory Commission (NRC) or the United States Atomic Energy Commission has entered into an effective agreement under subsection 274 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(b) et seq.).

(2) "Cabinet" is defined by KRS 194A.005(1).

(3) "Licensee" means a person who holds:

(a) A specific license issued by the cabinet pursuant to 902 KAR 100:185 and this administrative regulation;

(b) A specific license issued by the U.S. Nuclear Regulatory Commission or an agreement state; or

(c) A general license pursuant to 902 KAR 100:050 or equivalent regulations of the U.S. Nuclear Regulatory Commission or an agreement state.

Section 2. Applicability. This administrative regulation establishes the requirements for licensees who manufacture or use radioactive material under a general license. Except as established in subsections (1) through (4) of this section, the licensee shall comply with 10 C.F.R. Part 32. (1) The licensee shall not be subject to:

(a) 10 C.F.R. 32.1(c)(1);

(b) 10 C.F.R. 32.8;

(c) 10 C.F.R. 32.11;

(d) 10 C.F.R. 32.12;

(e) 10 C.F.R. 32.14;

(f) 10 C.F.R. 32.15;

(g) 10 C.F.R. 32.16;

(h) 10 C.F.R. 32.18;

(i) 10 C.F.R. 32.19;

(j) 10 C.F.R. 32.20;

(k) 10 C.F.R. 32.21;

(l) 10 C.F.R. 32.21a;

(m) 10 C.F.R. 32.22;

(n) 10 C.F.R. 32.23;

(o) 10 C.F.R. 32.25;

(p) 10 C.F.R. 32.26;

(q) 10 C.F.R. 32.27;

(r) 10 C.F.R. 32.28;

(s) 10 C.F.R. 32.29;

(t) 10 C.F.R. 32.30;

(u) 10 C.F.R. 32.31;

(v) 10 C.F.R. 32.32;

(w) 10 C.F.R. 32.301; or

(x) 10 C.F.R. 32.303.

(2) Reference to the NRC, Commission, or an agreement state shall be deemed to reference the Cabinet for Health and Family Services, Department for Public Health, Radiation Health Branch, the NRC, or an agreement state.

(3) Reference to "NRC Form 313, Application for Material License" shall be deemed to be a reference to Form RPS-7, incorporated by reference in 902 KAR 100:040.

(4) Notifications and reports required by 10 C.F.R. Part 32 shall be directed to the manager, Radiation Health Branch at:

(a) 275 East Main Street, Mailstop HS1-C-A, Frankfort, Kentucky 40621;

(b) (502) 564-1492: Facsimile;

(c) (502) 564-3700: Telephone, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(d) (800) 225-2587: Telephone, for hours except those established in paragraph (c) of this subsection. [Registration of Product Information. (1) A manufacturer or initial distributor of a sealed source, or device containing a sealed source, whose product is intended for use under a specific license, shall submit a request to the cabinet pursuant to 10 C.F.R. 32.210, for evaluation of radiation safety information about its product and for its registration.

(2) The request for review of a sealed source or device shall include sufficient information to provide reasonable assurance that the radiation safety properties of the source or device are adequate to protect health and minimize danger to life and property.

(3) The request shall include information on:

- (a) Design;
- (b) Manufacture;
- (c) Prototype testing;
- (d) Quality control program;
- (e) Labeling;
- (f) Proposed uses; and
- (g) Leak testing.

(4) For a device, the request shall also include sufficient information about:

- (a) Installation;
- (b) Service and maintenance;
- (c) Operating and safety instructions; and
- (d) Potential hazards.

(5) The cabinet shall evaluate a sealed source or device using radiation safety criteria in accepted industry standards. If the standards and criteria pursuant to 10 C.F.R. 32.210, do not readily apply to a particular case, the cabinet shall formulate reasonable standards and criteria, with the help of the manufacturer or distributor. The cabinet shall use criteria and standards sufficient to ensure that the radiation safety properties of the device or sealed source are adequate to protect health and minimize danger to life and property.

(6) After completion of the evaluation, the cabinet shall issue a certificate of registration to the person making the request. The certificate shall acknowledge the availability of the submitted information for inclusion in an application for a specific license proposing use of the product.

(7) A person submitting the request for evaluation and registration of safety information about the product shall manufacture and distribute the product in accordance with:

- (a) The statements and representations, including quality control program, contained in the request; and
- (b) The provisions of the registration certificate.

Section 2. Licensing the Introduction of Radioactive Material into Products in Exempt Concentrations. (1) In addition to the requirements established in 902 KAR Chapter 100 a specific license authorizing the introduction of radioactive material into a product or material owned by or in the possession of the licensee or another, to be transferred to a person exempt under 902 KAR 100:045, Section 2(1)(a) shall be issued if:

(a) The applicant submits a description of the:

- 1. Product or material into which the radioactive material will be introduced;
- 2. Intended use of the radioactive material and the product or material into which it is introduced;
- 3. Method of introduction;
- 4. Initial concentration of the radioactive material in the product or material;
- 5. Control methods to assure that no more than the specified concentration shall be introduced into the product or material;
- 6. Estimated time interval between introduction and transfer of the product or material; and
- 7. Estimated concentrations of the radioactive material in the product or material at the time of transfer; and

(b) The applicant provides reasonable assurance that the:

- 1. Concentrations of the radioactive material at the time of

transfer shall not exceed the concentrations established in 902 KAR 100:085;

2. Re-concentration of the radioactive material in concentrations exceeding those in 902 KAR 100:085 is not likely;

3. Use of lower concentrations is not feasible; and

4. Product or material is not likely to be incorporated in a food, beverage, cosmetic, drug, or other commodity or product designed for ingestion or inhalation by, or application to, a human being.

(2) A person licensed pursuant to this administrative regulation shall:

(a) Maintain records of transfer of radioactive material;

(b) File an annual report with the cabinet that shall include the:

1. Type and quantity of a product or material into which radioactive material has been introduced during the reporting period;

2. Name and address of the person who owned or possessed the product or material into which radioactive material has been introduced at introduction;

3. Type and quantity of radionuclide introduced into a product or material; and

4. Initial concentrations of the radionuclide in the product or material at transfer of the radioactive material by the licensee;

(c) Indicate in the report if no transfers of radioactive material have been made during the reporting period;

(d) File a report by July 30 covering the year ending the previous June 30; and

(e) Maintain the record of a transfer for a period of one (1) year after the event is included in a report to the cabinet.

Section 3. Resins Containing Scandium-46 and Designed for Sand Consolidation in Oil Wells: Requirements for License to Manufacture or Initially Transfer for Sale or Distribution. An application for a specific license to manufacture or initially transfer for sale or distribution, synthetic plastic resins containing scandium-46 for use as indicated in 902 KAR 100:045, Section 3(3), shall be approved if:

(1) The applicant satisfies the requirements specified in 902 KAR 100:040, Section 4;

(2) The product is designed to be used only for sand consolidation in oil wells;

(3) The applicant submits the following information:

(a) A general description of the product to be manufactured or initially transferred; and

(b) A description of control procedures used to assure that the concentration of scandium-46 in the final product at the time of distribution shall not exceed 1.4×10^{-3} micro-curie/milliliter; and

(4) A container of the product bears a durable, legible label approved by the cabinet based on the following information:

(a) The product name;

(b) A statement that the product contains radioactive scandium and is designed and manufactured only for sand consolidation in oil wells;

(c) Instructions necessary for proper use; and

(d) The manufacturer's name.

Section 4. Licensing the Manufacture and Distribution of a Device to a Person Generally Licensed under 902 KAR 100:050.

(1) In addition to the requirements established in 902 KAR Chapter 100 an application for a specific license to distribute certain devices containing radioactive material, excluding special nuclear material, to a person generally licensed shall be issued only if the applicant submits sufficient information relating to the:

(a) Design;

(b) Manufacture;

(c) Prototype testing;

(d) Quality control;

(e) Labels;

(f) Proposed uses;

(g) Installation;

(h) Servicing;

(i) Leak testing;

(j) Operating and safety instructions; and

(k) Potential hazards of the device to provide reasonable

assurance that:

1. Under accident conditions, such as fire and explosion associated with handling, storage, and use of the device, it is unlikely that a person would receive an external radiation dose or dose commitment in excess of the following organ doses:

a. Whole body, head and trunk, active blood-forming organs, gonads, or lens of eye - 15 rems (150 mSv);

b. Hands and forearms, feet and ankles, or localized areas of skin averaged over areas no larger than one (1) square centimeter - 200 rems (2 Sv); or

c. Other organs - 50 rems (500 mSv);

2. Under ordinary conditions of handling, storage, and use of the device, the radioactive material contained in the device shall not be released or inadvertently removed from the device, and it is unlikely that a person will receive in a period of one (1) calendar year a dose in excess of ten (10) percent of the limits specified in 902 KAR 100:019, Section 3; and

3. The device can be safely operated by individuals not having training in radiological protection.

(2) A device identified in subsection (1) of this section shall bear a durable, legible, clearly visible label or labels, in accordance with 902 KAR 100:050, which contain in a clearly identified and separate statement:

(a) Instructions and precautions necessary to assure safe installation, operation, and servicing of the device or reference to documents, such as operating and service manuals identified in the label that are used to provide this information;

(b) The requirement, or lack of requirement, for leak testing or for testing an "on-off" mechanism and indicator, including the maximum time interval for the testing and the identification of radioactive material by:

1. Isotope;

2. Quantity of radioactivity; and

3. Date of determination of the quantity; and

(c) The information called for in the following statement, in the same or substantially similar form:

"The receipt, possession, use, and transfer of this device, Model _____, Serial No. _____, are subject to a general license or the equivalent and the regulations of the U.S. Nuclear Regulatory Commission or an Agreement State. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited.

CAUTION - RADIOACTIVE MATERIAL

Name of manufacturer or distributor

The model, serial number, and name of the manufacturer or distributor may be omitted from this label if the information is elsewhere specified in labeling affixed to the device.

(3)(a) If the applicant desires that the device identified in subsection (1) of this section be required to be tested for proper operation of the "on-off" mechanism and indicator or for leakage of radioactive material, subsequent to the initial tests required by this administrative regulation at intervals longer than six (6) months but not exceeding three (3) years, the applicant shall include in the application sufficient information to demonstrate that the longer interval is justified by:

1. Performance characteristics of the device or similar devices; and

2. Design features that have a significant bearing on the probability or consequences of leakage of radioactive material from the device or failure of the "on-off" mechanism and indicator.

(b) In determining the acceptable interval for the test for leakage of radioactive material, the cabinet may consider information that shall include:

1. Primary containment or source capsule;

2. Protection of primary containment;

3. Method of sealing containment;

4. Containment construction materials;

5. Form of contained radioactive material;

6. Maximum temperature withstood during prototype tests;

7. Maximum pressure withstood during prototype tests;

8. Maximum quantity of contained radioactive material;

9. Radiotoxicity of contained radioactive material; and

10. Operating experience with identical devices or similarly

designed and constructed devices.

(4)(a) If the applicant desires authorization of the general licensee established in 902 KAR 100:050, Section 3, or pursuant to equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement State, to install the device, collect the sample to be analyzed by a specific licensee for leakage of radioactive material, service the device, test the "on-off" mechanism and indicator, or remove the device from installation, the applicant shall include in the application:

1. Written instructions to be followed by the general licensee;

2. Estimated calendar quarter doses associated with the activity or activities; and

3. Basis for the estimates.

(b) The information shall demonstrate that performance of the activity by an individual untrained in radiological protection, handling, storage, and use of devices under the general license, is unlikely to cause that individual to receive a dose in excess of ten (10) percent of the annual limits specified in 902 KAR 100:019, Section 3.

(5) A person licensed pursuant to this administrative regulation to distribute devices to generally licensed persons shall:

(a) Furnish a copy of the general license identified in 902 KAR 100:050, Section 3, to each person to whom the licensee, directly or through an intermediate person, transfers radioactive material in a device for use as authorized by a general license;

(b) Furnish a copy of the general license contained in the U.S. Nuclear Regulatory Commission's or Agreement State's regulation equivalent to 902 KAR 100:050, Section 3, or alternatively, furnish a copy of the general license to each person to whom the licensee directly or through an intermediate person transfers radioactive material in a device for use pursuant to the general license of the U.S. Nuclear Regulatory Commission or the Agreement State. If a copy of the general license identified in 902 KAR 100:050, Section 3, is furnished to the person, it shall be accompanied by a note explaining that the use of the device is regulated by the U.S. Nuclear Regulatory Commission or Agreement State under requirements substantially the same as those in 902 KAR 100:050, Section 3;

(c) Report to the cabinet transfers of the devices to persons for use under the general license.

1. The report shall identify:

a. A general licensee by name and address;

b. An individual by name or position who may constitute a point of contact between the cabinet and the general licensee;

c. The type and model number of device transferred; and

d. The quantity and type of radioactive material contained in the device.

2. If one (1) or more intermediate persons possess the device temporarily at the intended place of use prior to its possession by the user, the report shall include identification of each intermediate person by name, address, contact, and relationship to the intended user.

3. The report shall indicate if no transfers have been made to persons generally licensed during the reporting period.

4. The report shall cover a calendar quarter and shall be filed within thirty (30) days of the close of the quarter.

(d) Furnish reports to other agencies, including:

1.a. Report to the U.S. Nuclear Regulatory Commission transfers of these devices to persons for use under the U.S. Nuclear Regulatory Commission general license in Section 31.5 of 10 C.F.R. Part 31; or

b. Report to the responsible state agency transfers of devices manufactured and distributed for use under a general license in that state's regulations equivalent to 902 KAR 100:050, Section 3;

c. Identify:

(i) A general licensee by name and address;

(ii) An individual by name or position who may constitute a point of contact between the agency and the general licensee;

(iii) The type and model of the device transferred; and

(iv) The quantity and type of radioactive material contained in the device;

2. If one (1) or more intermediate persons possess the device temporarily at the intended place of use prior to its possession by

the user, include identification of each intermediate person by name, address, contact, and relationship to the intended user;

3. Submit within thirty (30) days after the end of the calendar quarter in which the device is transferred to the generally licensed person;

4. If no transfers have been made to U.S. Nuclear Regulatory Commission licensees during the reporting period, this information shall be reported to the U.S. Nuclear Regulatory Commission; and

5. If no transfers have been made to general licensees within a particular state during the reporting period, this information shall be reported to the responsible state agency upon request of that agency;

(e) Keep records showing the name, address, and the point of contact for a general licensee to which the licensee, directly or through an intermediate person, transfers radioactive material in devices for use as authorized by a general license or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement State. The records shall show:

1. The date of transfer;

2. The radionuclide and the quantity of radioactivity in each device transferred;

3. The identity of the intermediate person; and

4. Compliance with the report requirements; and

(f) Maintain the records required by paragraphs (c) and (d) of this subsection for a period of five (5) years from the date of the recorded transfer.

~~Section 5. Special Requirements for the Manufacture, Assembly, or Repair of Luminous Safety Devices for use in Aircraft. An application for a specific license to manufacture, assemble, or repair luminous safety devices containing tritium or promethium-147 for use in aircraft, for distribution to persons generally licensed pursuant to 902 KAR 100:050, shall be approved if:~~

~~(1) The applicant satisfies the requirements specified in 902 KAR 100:040, Section 4; and~~

~~(2) The applicant satisfies the requirements of U.S. Nuclear Regulatory Commission 10 C.F.R. Part 32, Sections 32.2(b), 32.53, 32.54, 32.55, 32.56, 32.101, and 32.110 or their equivalent.~~

~~Section 6. Special Requirements for License to Manufacture and Distribute Calibration Sources Containing Americium-241, Plutonium or Radium-226 for Distribution to Persons Generally Licensed pursuant to 902 KAR 100:050. An application for a specific license to manufacture or distribute calibration and reference sources containing americium-241, plutonium or radium-226 to persons generally licensed pursuant to 902 KAR 100:050 shall be approved if:~~

~~(1) The applicant satisfies the requirements established in 902 KAR 100:040, Section 4; and~~

~~(2) The applicant satisfies the requirements of U.S. Nuclear Regulatory Commission 10 C.F.R. Part 32, Sections 32.57, 32.58, 32.59, and 32.102, and 10 C.F.R. Part 70, Section 70.39, or their equivalent.~~

~~Section 7. Licensing the Manufacture and Distribution of Ice Detection Devices Containing Strontium-90. An application for a specific license to manufacture and distribute ice detection devices to persons generally licensed shall be approved if:~~

~~(1) The applicant satisfies the requirements established in 902 KAR 100:040, Section 4; and~~

~~(2) The criteria of U.S. Nuclear Regulatory Commission 10 C.F.R. Part 32, Sections 32.2(b), 32.61, 32.62, 32.103, and 32.110 are met.~~

~~Section 8. Manufacture and Distribution of Radioactive Material for Certain In-Vitro Clinical or Laboratory Testing under a General License. An application for a specific license to manufacture or distribute radioactive material for use pursuant to the general license established in 902 KAR 100:050, Section 4, shall be approved if:~~

~~(1) The applicant satisfies the general requirements specified in 902 KAR 100:040, Section 4;~~

~~(2) The radioactive material is to be prepared for distribution in prepackaged units of:~~

~~(a) Iodine-125 in units not exceeding ten (10) microcuries (370 kBq) each;~~

~~(b) Iodine-131 in units not exceeding ten (10) microcuries (370 kBq) each;~~

~~(c) Carbon-14 in units not exceeding ten (10) microcuries (370 kBq) each;~~

~~(d) Hydrogen-3 (tritium) in units not exceeding fifty (50) microcuries (1.85 MBq) each;~~

~~(e) Iron-59 in units not exceeding twenty (20) microcuries (704 kBq) each;~~

~~(f) Selenium-75 in units not exceeding ten (10) microcuries (370 kBq) each;~~

~~(g) Mock iodine-125 in units not exceeding 0.05 microcurie (1.85 MBq) of iodine-129 and 0.005 microcurie (185 Bq) of americium-241 each; or~~

~~(h) Cobalt-57 in units not exceeding fifty (50) microcuries (370 kBq) each;~~

~~(3) Each prepackaged unit bears a durable, clearly visible label:~~

~~(a) Identifying the radioactive contents as to chemical form and radionuclide, and indicating that the amount of radioactivity does not exceed:~~

~~1. Ten (10) microcuries (370 kBq) of iodine-131, iodine-125, selenium-75, cobalt-57, or carbon-14;~~

~~2. Fifty (50) microcuries (1.85 MBq) of hydrogen-3 (tritium);~~

~~3. Twenty (20) microcuries (740 kBq) of iron-59; or~~

~~4. Mock iodine-125 in units not exceeding 0.05 microcurie (1.85 kBq) of iodine-129 and 0.005 microcurie (185 Bq) of americium-241 each; and~~

~~(b) Displaying the radiation caution symbol described in 902 KAR 100:019, Section 23, and the words, "Caution, Radioactive Material" and "Not for Internal or External Use in Humans or Animals";~~

~~(4) The following statement, or a substantially similar statement which contains the information called for in the following statement, appears on a label affixed to a prepackaged unit, or appears in a leaflet or brochure which accompanies the package:~~

~~"This radioactive material may be received, acquired, possessed, and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use, and transfer are subject to the administrative regulations and a general license or the equivalent of the United States Nuclear Commission or of an Agreement State.~~

~~(Name of Manufacturer)"; and~~

~~(5) The label affixed to the unit, or the leaflet or brochure that accompanies the package, contains adequate information regarding precautions to be observed in handling and storing the radioactive material. For a mock iodine-125 reference or calibration source, the information accompanying the source shall contain directions to the licensee regarding the waste disposal requirements established in 902 KAR 100:021, Section 1.~~

~~Section 9. Manufacture and Distribution of Radiopharmaceuticals Containing Radioactive Material for Medical Use Under Specific Licenses. (1) An application for a specific license to manufacture, prepare, or transfer for commercial distribution radiopharmaceuticals containing radioactive material for use by persons licensed pursuant to 902 KAR 100:072, shall be approved if the applicant:~~

~~(a) Satisfies the requirements specified in 902 KAR 100:040, Section 4;~~

~~(b) Submits evidence that the applicant is at least one (1) of the following:~~

~~1. Registered or licensed with the U.S. Food and Drug Administration (FDA) as a drug manufacturer;~~

~~2. Registered or licensed with a state agency as a drug manufacturer;~~

~~3. Licensed as a pharmacy by the State Board of Pharmacy; or~~

4. Operating as a nuclear pharmacy within the federal medical institution;

(c) Submits information on:

1. The radionuclide;

2. Chemical and physical form;

3. Maximum activity per vial, syringe, generator, or other container of the radioactive drug; and

4. Shielding provided by the packaging of the radioactive material to show it is appropriate for safe handling and storage of radiopharmaceuticals by medical use licensees; and

(d) Satisfies the labeling requirements in this paragraph:

1. The label shall be affixed to the transport radiation shield, if it is constructed of lead, glass, plastic, or other material of a radioactive drug to be transferred for commercial distribution. The label shall include:

a. The radiation symbol;

b. The words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL";

c. The name of the radioactive drug or its abbreviation; and

d. The quantity of radioactivity at a specified date and time. For radioactive drugs with a half life greater than 100 days, the time may be omitted.

2. A label shall be affixed to a syringe, vial, or other container used to hold a radioactive drug to be transferred for commercial distribution. The label shall include:

a. The radiation symbol;

b. The words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL"; and

c. An identifier that ensures the syringe, vial, or other container can be correlated with the information on the transport radiation shield label.

(2) A licensee described by subsection (1)(b)3 or 4 of this section may:

(a) Prepare radioactive drugs for medical use, as defined in 902 KAR 100:010, if the radioactive drug is prepared by an authorized nuclear pharmacist, as specified in paragraphs (b) and (c) of this subsection, or an individual under the supervision of an authorized nuclear pharmacist, as specified in 902 KAR 100:072, Section 12;

(b) Allow a pharmacist to work as an authorized nuclear pharmacist if the individual:

1. Qualifies as an authorized nuclear pharmacist as defined in 902 KAR 100:010;

2. Meets the requirements specified in 902 KAR 100:072, Sections 63 and 66, and the licensee has received an approved license amendment identifying the individual as an authorized nuclear pharmacist; or

3. Is designated as an authorized nuclear pharmacist in accordance with paragraph (c) of this subsection; and

(c) Designate a pharmacist as an authorized nuclear pharmacist if the individual is identified as an authorized user on a nuclear pharmacy license issued by the cabinet.

(3) The actions authorized in subsections (2)(a) and (b) of this section shall be permitted in spite of more restrictive language in license conditions.

(4) A licensee shall provide to the cabinet a copy of an individual's certification by the Board of Pharmaceutical Specialties, the cabinet, the U.S. Nuclear Regulatory Commission, or an agreement state license, and a copy of the state pharmacy licensure or registration, no later than thirty (30) days after the date that the licensee allows the individual to work as an authorized nuclear pharmacist, pursuant to subsection (2)(b)1 and 3 of this section.

(5) A licensee shall:

(a) Possess and use instrumentation to measure the radioactivity of radioactive drugs;

(b) Have procedures for use of the instrumentation;

(c) Measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha-, beta- or photon-emitting radioactive drugs prior to transfer for commercial distribution;

(d) Perform accuracy, linearity, and geometry dependence tests on an instrument before initial use, periodically, and following

repair, as appropriate for the instrument, and make necessary adjustments; and

(e) Check an instrument for constancy and proper operation at the beginning of each day of use.

(6) This section shall not relieve a licensee from complying with applicable FDA, other federal, and state requirements governing radioactive drugs.

~~Section 10. Manufacture and Distribution of Sources or Devices Containing Radioactive Material for Medical Use. An application for a specific license to manufacture and distribute sources and devices containing radioactive material to persons licensed as authorized by 902 KAR 100:072 for use as a calibration, transmission, or reference source or for medical uses listed in 902 KAR 100:072, Sections 37, 45 and 46 shall be approved if:~~

~~(1) The applicant satisfies the requirements established in 902 KAR 100:040, Section 4;~~

~~(2) The applicant submits sufficient information regarding a type of source or device pertinent to an evaluation of its radiation safety, including:~~

~~(a) The radioactive material contained, its chemical and physical form, and amount;~~

~~(b) Details of design and construction of the source or device;~~

~~(c) Procedures for, and results of, prototype tests to demonstrate that the source or device will maintain its integrity under stresses likely to be encountered in normal use and accidents;~~

~~(d) For devices containing radioactive material, the radiation profile of a prototype device;~~

~~(e) Details of quality control procedures to assure that production sources and devices meet the standards of the design and prototype tests;~~

~~(f) Procedures and standards for calibrating sources and devices;~~

~~(g) Legend and methods for labeling sources and devices as to their radioactive content; and~~

~~(h) Instructions for handling and storing the source or device from the radiation safety standpoint. The instructions shall be included on a durable label attached to the source or device, or attached to a permanent storage container for the source or device. Instructions too lengthy for a label may be summarized on the label and printed in detail on a brochure referenced on the label;~~

~~(3) The label affixed to the source or device, or to the permanent storage container for the source or device, contains:~~

~~(a) Information on the radionuclide;~~

~~(b) Quantity and date of assay; and~~

~~(c) A statement that the name of source or device is licensed by the cabinet for distribution to persons licensed as authorized by 902 KAR 100:072, or under equivalent licenses of the U.S. Nuclear Regulatory Commission or an Agreement State;~~

~~(4) If an applicant desires the source or device to be tested for leakage of radioactive material at intervals longer than six (6) months, the applicant shall include in the application sufficient information to demonstrate that the longer interval is justified by:~~

~~(a) Performance characteristics of the source or device, or similar sources or devices; and~~

~~(b) Design features having a significant bearing on the probability or consequence of leakage of radioactive material from the source; and~~

~~(5) In determining the acceptable interval for tests of leakage of radioactive material, the cabinet shall consider information that includes:~~

~~(a) Primary containment or source capsule;~~

~~(b) Protection of primary containment;~~

~~(c) Method of sealing containment;~~

~~(d) Containment construction materials;~~

~~(e) Form of contained radioactive material;~~

~~(f) Maximum temperature withstood during prototype tests;~~

~~(g) Maximum pressure withstood during prototype tests;~~

~~(h) Maximum quantity of contained radioactive material;~~

~~(i) Radiotoxicity of contained radioactive material; and~~

(j) Operating experience with identical sources or devices, or similarly designed and constructed sources or devices.

~~Section 11. Requirements for License to Manufacture and Distribute Industrial Products Containing Depleted Uranium for Mass-volume Applications. (1) An application for a specific license to manufacture or distribute an industrial product or device containing depleted uranium for use authorized by 902 KAR 100:050, Section 2, or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement State shall be approved if:~~

~~(a) The applicant satisfies the general requirements specified in 902 KAR 100:040, Section 4;~~

~~(b) The applicant submits sufficient information relating to the:~~

- ~~1. Design;~~
- ~~2. Manufacture;~~
- ~~3. Prototype testing;~~
- ~~4. Quality control procedures;~~
- ~~5. Labeling or marking;~~
- ~~6. Proposed uses; and~~
- ~~7. Potential hazards of the industrial product or device;~~

~~(c) The applicant provides reasonable assurance that possession, use, or transfer of the depleted uranium in the product or device is not likely to cause an individual to receive in a period of one (1) year a radiation dose in excess of ten (10) percent of the limits specified in 902 KAR 100:019, Section 3; and~~

~~(d) The applicant submits sufficient information regarding the industrial product or device, and the presence of depleted uranium for a mass-volume application in the product or device, to provide reasonable assurance that unique benefits will accrue to the public because of the usefulness of the product or device.~~

~~(2) For an industrial product or device that has questionable unique benefits, the cabinet may approve an application for a specific license pursuant to this section only if the product or device is found to combine a high degree of utility and low probability of uncontrolled disposal and dispersal of significant quantities of depleted uranium into the environment.~~

~~(3) The cabinet shall deny an application for a specific license pursuant to this section if the end use of the industrial product or device cannot reasonably be foreseen.~~

~~(4) A person licensed as authorized by this section shall:~~

~~(a) Maintain the level of quality control required by the license in:~~

- ~~1. Manufacture of the industrial product or device; and~~
- ~~2. Installation of the depleted uranium into the product or device;~~

~~(b) Label or mark each unit to identify:~~

- ~~1. The manufacturer of the product or device;~~
- ~~2. The number of the license under which the product or device was manufactured or distributed;~~
- ~~3. The fact that the product or device contains depleted uranium;~~
- ~~4. The quantity of depleted uranium in the product or device; and~~

~~5. That the receipt, possession, use, or transfer of the product or device is subject to a general license, or the equivalent, and the regulations of the U.S. Nuclear Regulatory Commission or an Agreement State;~~

~~(c) Assure that the depleted uranium, before being installed in a product or device, has been impressed with the legend "DEPLETED URANIUM" clearly legible through plating or other covering;~~

~~(d) Furnish a copy of the general license contained in:~~

~~1. 902 KAR 100:050 to a person to whom depleted uranium is transferred in a product or device for use authorized by the general license; or~~

~~2. The U.S. Nuclear Regulatory Commission's or Agreement State's regulation equivalent to 902 KAR 100:050, and a copy of an applicable U.S. Nuclear Regulatory Commission's or Agreement State's certificate, to a person to whom depleted uranium is transferred in a product or device for use as authorized by the general license of the U.S. Nuclear Regulatory Commission or an Agreement State, with a note explaining that use of the product or~~

~~device is regulated by the U.S. Nuclear Regulatory Commission or an Agreement State under requirements substantially the same as those in 902 KAR 100:050;~~

~~(e) Furnish the following to either the cabinet, U.S. Nuclear Regulatory Commission, or agreement state:~~

~~1. A report of each transfer of an industrial product or device to a person for use pursuant to the general license in 902 KAR 100:050. The report shall identify:~~

- ~~a. A general licensee by name and address;~~
- ~~b. An individual, by name or position, who constitutes a point of contact between the cabinet and the general licensee;~~
- ~~c. The type and model number of device transferred; and~~
- ~~d. The quantity of depleted uranium contained in the product or device.~~

~~2. The report identified in subparagraph 1 of this paragraph shall be submitted within thirty (30) days after the end of a calendar quarter in which the product or device is transferred to the generally licensed person. If no transfers have been made to persons generally licensed pursuant to 902 KAR 100:050 during the reporting period, the report shall so indicate; and~~

~~(f) Keep records showing the name, address, and point of contact for a general licensee to whom he transfers depleted uranium in an industrial product or device for use authorized by the general license provided in 902 KAR 100:050 or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement State. The records shall be maintained for a period of three (3) years from the date of transfer and shall show the date of each transfer, the quantity of depleted uranium in a product or device transferred, and compliance with the report requirements of this section.~~

~~Section 12. Licensing the Distribution of Naturally Occurring and Accelerator Produced Radioactive Material (NARM) in Exempt Quantities. (1) An application for a specific license to distribute NARM to persons exempted from these regulations authorized by 902 KAR 100:045 shall be approved if:~~

~~(a) The radioactive material is not contained in a food, beverage, cosmetic, drug, or other commodity designed for ingestion or inhalation by, or application to, a human being;~~

~~(b) The radioactive material is in the form of processed chemical elements, compounds, or mixtures, tissue samples, bioassay samples, counting standards, plated or encapsulated sources, or similar substances, identified as radioactive and to be used for its radioactive properties, but is not incorporated into a manufactured or assembled commodity, product, or device intended for commercial distribution; and~~

~~(c) The applicant submits copies of prototype labels and brochures in accordance with 10 C.F.R. 32.18 and 32.19 and the cabinet approves the labels and brochures.~~

~~(2) The license issued pursuant to this section shall be subject to the following conditions:~~

~~(a) More than ten (10) exempt quantities shall not be sold or transferred in a single transaction. However, an exempt quantity may be composed of fractional parts of one (1) or more of the exempt quantity, if the sum of the fractions does not exceed unity.~~

~~(b) An exempt quantity shall be packaged separately and individually. More than ten (10) packaged exempt quantities shall not be contained in an outer package for transfer to persons exempt as authorized by 902 KAR 100:045. The dose rate at the external surface of the outer package shall not exceed five-tenths (0.5) millirem per hour.~~

~~(c) The immediate container of each quantity or separately packaged fractional quantity of radioactive material shall bear a durable, legible label which:~~

- ~~1. Identifies the radionuclide and the quantity of radioactivity; and~~
- ~~2. Bears the words "Radioactive Material."~~

~~(d) In addition to the labeling information required by this subsection, the label affixed to the immediate container, or an accompanying brochure, shall:~~

- ~~1. State that the contents are exempt from licensing agency requirements;~~
- ~~2. Bear the words "Radioactive Material – Not for Human Use–"~~

~~Introduction into Foods, Beverages, Cosmetics, Drugs, or Medicinals, or into Products Manufactured for Commercial Distribution is Prohibited – Exempt Quantities Should Not Be Combined"; and~~

~~3. Establish appropriate additional radiation safety precautions and instructions relating to the handling, use, storage, and disposal of the radioactive material.~~

~~(3)(a) A person licensed pursuant to this section shall maintain records identifying, by name and address, each person to whom radioactive material is transferred for use in accordance with 902 KAR 100:045 or the equivalent regulations of a licensing agency, and stating the kinds and quantities of radioactive material transferred.~~

~~(b) An annual summary report stating the total quantity of each radionuclide transferred under the specific license shall be filed with the cabinet.~~

~~(c) A report shall cover the year ending June 30 and shall be filed within thirty (30) days after June 30. The report shall indicate if no transfers of radioactive material have been made during the reporting period, as authorized by this section.~~

~~Section 13. Licensing the Incorporation of Naturally Occurring and Accelerator Produced Radioactive Material (NARM) into Gas and Aerosol Detectors. (1) An application for a specific license authorizing the incorporation of NARM into gas and aerosol detectors to be distributed to persons exempt pursuant to 902 KAR 100:045 shall be approved if the application satisfies requirements equivalent to those contained in U.S. Nuclear Regulatory Commission 10 C.F.R. Part 32.26.~~

~~(2) The maximum quantity of radium-226 in a device shall not exceed one-tenth (0.1) microcurie (3.7 kBq).]~~

STEVEN STACK, M.D., Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: May 26, 2023

FILED WITH LRC: June 7, 2023 at 2:35 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2023, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by August 14, 2023, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2023. 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 requirements for issuing specific licenses to persons who manufacture, assemble, repair, or distribute commodities, products, or devices, that contain radioactive material.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to protect radiation workers and the public from exposure to excessive radiation and set safety

limits.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.844 requires the cabinet to provide by administrative regulation the requirements for the licensing, use, and disposal of radioactive materials.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures all those engaged in the licensing, use, transfer, and disposal of radioactive source material meet the regulatory 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 to this administrative regulation adopts by reference the applicable requirements of 10 C.F.R. Part 32.

(b) The necessity of the amendment to this administrative regulation: As an agreement state with the Nuclear Regulatory Commission (NRC), the Radiation Health Branch (RHB) is required to have state regulations compatible with the regulations promulgated by NRC.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.842(1) and (2) establish the cabinet as the radiation control agency of Kentucky and authorize the cabinet to issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation ensures all licensees who have a specific license to manufacture, assemble, repair, or distribute commodities, products, or devices, that contain radioactive material are in full compliance with both state and federal requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 118 licenses issued for certain uses of radioactive material and specific devices containing radioactive material.

(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 RHB will need to revise guidance documents for licensees to reflect these changes. No additional actions will be needed by the licensee to comply 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): There is a minimal cost to the cabinet associated with updating guidance documents.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Adopting the applicable parts of 10 C.F.R. Part 32 will reduce the redundancy between state and federal requirements. This will reduce the time needed to research applicable regulations and make it easier for the licensee to review existing guidance documents.

(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: This administrative regulation does not impact cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Radiation Health Branch is funded through a mix of state general fund dollars and the various fees associated with issuing licenses.

(7) Provide an assessment of whether an 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 needed 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 associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied. The requirements of this administrative regulation are applied equally to all licensees.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Radiation Health Branch within the Department for Public Health 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) and 211.844.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 does not add cost to the agency.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation does not add cost to the agency.

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 may result in minimal cost savings for the regulated entities. The amendment to this administrative regulation reduces the administrative burden of having to research and follow duplicative state and federal requirements.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation may result in minimal cost savings for the regulated entities. The amendment to this administrative regulation reduces the administrative burden of having to research and follow duplicative state and federal requirements.

(c) How much will it cost the regulated entities for the first year? This administrative regulation will have no impact on cost for the regulated entities.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation will have no impact on cost for 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 (+/-):

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. Atomic Energy Act of 1954, 42 U.S.C. 2021, as amended, and 10 C.F.R. Part 32.

(2) State compliance standards. As an agreement state with the Nuclear Regulatory Commission, the state is required to have a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the state covered by the proposed agreement. The state is required to adopt compliance standards for the protection of the public health, safety, and environment from hazards associated with such material which are equivalent, to the extent practicable, or more stringent than, standards adopted and enforced by the Commission for the same purpose.

(3) Minimum or uniform standards contained in the federal mandate. In accordance with 42 U.S.C. 2021(g), the Commission is authorized and directed to cooperate with the states in the formulation of standards for protection against hazards of radiation to assure that state and Commission programs for protection against hazards of radiation will be coordinated and compatible. Pursuant to 42 U.S.C. 2021(a)(3), the purpose of this standard is to promote orderly regulatory pattern between the Commission and state governments with respect to nuclear development and use and regulation of byproduct, source, and special nuclear materials.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable as there are no stricter standards, or additional or different responsibilities or requirements.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Public Health Protection and Safety (Amendment)

902 KAR 100:065. Reciprocal recognition.

RELATES TO: KRS 194A.005, 211.842-211.852, 211.990(4), 10 C.F.R. Part 150, 42 U.S.C. 2021(b)[450.20]

STATUTORY AUTHORITY: KRS 13B.170, 194A.050(1), [211.090(3)] 211.844

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law, to qualify for the receipt of federal funds, and to cooperate with other state and federal agencies. KRS 211.844 requires the Cabinet for Health and Family Services to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation provides for the reciprocal recognition of radioactive material licenses issued by the United States Nuclear Regulatory Commission or another agreement state.

Section 1. Definitions. (1) "Agreement state" means a state that the United States Nuclear Regulatory Commission (NRC) or the United States Atomic Energy Commission has entered into an effective agreement under subsection 274 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(b) et seq.).

(2) "Cabinet" is defined by KRS 194A.005(1).

(3) "Licensee" means a person who holds:

(a) A specific license issued by the cabinet pursuant to 902 KAR 100:040, 902 KAR 100:185, and this administrative regulation;

(b) A specific license issued by the U.S. Nuclear Regulatory Commission or an agreement state; or

(c) A general license pursuant to 902 KAR 100:050 or equivalent regulations of the U.S. Nuclear Regulatory Commission

or an agreement state.

Section 2. Applicability. This administrative regulation shall apply to a licensee. The licensee shall comply with 10 C.F.R. Part 150 except as established in subsection (1) through (3) of this section.

(1) The licensee shall not be subject to:

(a) 10 C.F.R. 150.3 Definitions: Foreign Obligations;

(b) 10 C.F.R. 150.4;

(c) 10 C.F.R. 150.5;

(d) 10 C.F.R. 150.7;

(e) 10 C.F.R. 150.10;

(f) 10 C.F.R. 150.14;

(g) 10 C.F.R. 150.15;

(h) 10 C.F.R. 150.15a;

(i) 10 C.F.R. 150.16;

(j) 10 C.F.R. 150.17;

(k) 10 C.F.R. 150.17a;

(l) 10 C.F.R. 150.19;

(m) 10 C.F.R. 150.21;

(n) 10 C.F.R. 150.30;

(o) 10 C.F.R. 150.31;

(p) 10 C.F.R. 150.32; and

(q) 10 C.F.R. 150.33.

(2) Reference to the NRC, Commission, or an agreement state shall be deemed to reference the Cabinet for Health and Family Services, Department for Public Health, Radiation Health Branch, the NRC, or an agreement state.

(3) Notifications and reports required by 10 C.F.R. Part 150 shall be directed to the manager, Radiation Health Branch at:

(a) 275 East Main Street, Mailstop HS1-C-A, Frankfort, Kentucky 40621;

(b) (502) 564-1492: Facsimile;

(c) (502) 564-3700: Telephone, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(d) (800) 225-2587: Telephone, for hours except those established in paragraph (c) of this subsection.

Section 3. The out-of-state licensee requesting reciprocity shall pay an annual fee in accordance with 902 KAR 100:012.[Reciprocal Recognition of Licenses. (1) Subject to the provisions of 902 KAR Chapter 100, a person who holds a specific license from the United States Nuclear Regulatory Commission or an Agreement State, issued by the agency having jurisdiction where the licensee maintains an office for directing the licensed activity, and at which radiation safety records are normally maintained, shall be granted a general license to conduct the activities authorized in the licensing document within the Commonwealth of Kentucky, except in areas of exclusive federal jurisdiction, for a period of 180 days in a calendar year if:

(a) The licensing document does not limit the activity authorized by the document to specified installations or locations;

(b) 1. The out-of-state licensee notifies the cabinet in writing at least three (3) days prior to engaging in the activity. The notification shall include:

a. The date of arrival;

b. The duration of use;

c. Nature and scope of the use;

d. The company where the radioactive material is to be used;

e. The name of the person in charge of the activity to be conducted under the license;

f. The exact location and type of proposed possession within this state; and

g. A copy of the pertinent licensing document.

2. If, for a specific case, the three (3) day period would impose an undue hardship on the out-of-state licensee, the licensee may, upon application to the cabinet, obtain permission to proceed sooner.

3. The cabinet may waive the requirement for filing additional written notifications during the remainder of the calendar year following the receipt of the initial notification from a person engaging in activities under the general license provided in this section;

(c) The out-of-state licensee complies with 902 KAR Chapter 100 and with the terms and conditions of his licensing document, except terms and conditions which may be inconsistent with 902 KAR Chapter 100;

(d) The out-of-state licensee supplies information as the cabinet may reasonably request;

(e) The licensee does not establish a permanent office in this state; and

(f) The out-of-state licensee does not transfer or dispose of radioactive material possessed or used in accordance with the general license provided in this section, except by transfer to a person:

1. Specifically licensed by the cabinet or by the United States Nuclear Regulatory Commission to receive the material; or

2. Exempt from the requirements for a license for material specified in 902 KAR Chapter 100; and

(g) The out-of-state licensee pays an annual fee in accordance with 902 KAR 100:012.

(2) In addition to the provisions of subsection (1) of this section, a person who holds a specific license or equivalent licensing document issued by the United States Nuclear Regulatory Commission or an Agreement State authorizing the holder to manufacture, transfer, install or service a device described in 902 KAR 100:050, Section 3(3)(a), relating to the general licensing of certain uses of radioactive material and specific devices containing radioactive material within areas subject to the jurisdiction of the licensing body shall be granted a general license to install, transfer, demonstrate or service the device in the Commonwealth of Kentucky if:

(a) The person satisfies the requirements of 902 KAR Chapter 200;

(b) The device has been manufactured, labeled, installed and serviced in accordance with applicable provisions of the specified license issued to the person by the United States Nuclear Regulatory Commission or an Agreement State;

(c) The person assures that each label required to be affixed to the device, in accordance with administrative regulations of the authority which licensed the manufacture of the device, bears a statement that "removal of this label is prohibited";

(d) The holder of the specific license furnishes to a general licensee to whom he transfers a device, or on whose premises he installs a device, a copy of the general license contained in 902 KAR 100:050, Section 3(3), relating to the general licensing of certain uses of radioactive materials and specific devices containing radioactive material; and

(e) The person files a report with the cabinet within thirty (30) days after the end of a calendar quarter in which a device is transferred to a person, or installed in a location, within the jurisdiction of the cabinet. A report shall identify a general licensee to whom the a device is transferred by:

1. Name and address;

2. The type of device transferred; and

3. The quantity and type of radioactive material contained in the device.

(3) The cabinet may withdraw, limit, or qualify its acceptance of a specific license or equivalent licensing document issued by another agency, or of a product distributed as authorized by a licensing document, upon determining that the action is necessary in order to prevent undue hazard to public health and safety and property.]

STEVEN STACK, M.D., Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: May 26, 2023

FILED WITH LRC: June 7, 2023 at 2:35 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2023, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by August 14, 2023, five (5) workdays prior to the hearing, of their intent to attend. If no

notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2023. 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 provides reciprocal recognition of radioactive material licenses issued by the United States Nuclear Regulatory Commission or another agreement state.

(b) The necessity of this administrative regulation: This administrative regulation identifies alternate licensing criteria for lower activities and specific uses of radioactive materials.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.844 requires the cabinet to provide by administrative regulation the requirements for the licensing, use, and disposal of radioactive materials.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation allows businesses with a valid radioactive materials license to conduct activities 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: The amendment to this administrative regulation adopts by reference the applicable requirements of 10 C.F.R. Part 150.

(b) The necessity of the amendment to this administrative regulation: As an agreement state with the Nuclear Regulatory Commission (NRC), Kentucky is required to have state regulations compatible with the regulations promulgated by NRC. This change will make the Radiation Health Branch (RHB) compatible with applicable requirements of 10 C.F.R. Part 150.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.842(1) and (2) establish the cabinet as the radiation control agency of the State of Kentucky and authorize the cabinet to issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation ensures all licensees who have a general license for certain uses of radioactive material and specific devices containing radioactive material are in full compliance with state and federal requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 118 licenses issued for certain uses of radioactive material and specific devices containing radioactive material.

(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 will be needed by

the licensee to comply 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): There is a minimal cost to the cabinet associated with updating references.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Adopting 10 C.F.R. Part 150 by reference will reduce the redundancy between state and federal requirements. This will reduce the time needed to research applicable regulations and make it easier for the licensee to review existing guidance documents.

(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 to implement.

(b) On a continuing basis: The amendment to this administrative regulation does not impact cost to the agency.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Radiation Health Branch is funded through a mix of state general fund dollars and the various fees associated with issuing licenses.

(7) Provide an assessment of whether an 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 needed 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 associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied. The requirements of this administrative regulation are applied equally to all licensees.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Radiation Health Branch within the Department for Public Health 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) and 211.844.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 does not impact cost to the agency.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation does not impact cost to the agency.

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 may result in minimal cost savings for the regulated entities. The amendment to this administrative regulation reduces the administrative burden of having to research and follow duplicative state and federal requirements.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation may result in minimal cost savings for the regulated entities. The amendment to this administrative regulation reduces the administrative burden of having to research and follow duplicative state and federal requirements.

(c) How much will it cost the regulated entities for the first year? This administrative regulation will have no impact on cost for the regulated entities.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation will have no impact on cost for 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 (+/-):

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. Atomic Energy Act of 1954, 42 U.S.C. 2021, as amended, and 10 C.F.R. Part 150.

(2) State compliance standards. As an agreement state with the Nuclear Regulatory Commission, the state is required to have a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the state covered by the proposed agreement. The state is required to adopt compliance standards for the protection of the public health, safety, and environment from hazards associated with such material which are equivalent, to the extent practicable, or more stringent than, standards adopted and enforced by the Commission for the same purpose.

(3) Minimum or uniform standards contained in the federal mandate. In accordance with 42 U.S.C. 2021(g), the Commission is authorized and directed to cooperate with the states in the formulation of standards for protection against hazards of radiation to assure that state and Commission programs for protection against hazards of radiation will be coordinated and compatible. Pursuant to 42 U.S.C. 2021(a)(3), the purpose of this standard is to promote orderly regulatory pattern between the Commission and state governments with respect to nuclear development and use and regulation of byproduct, source, and special nuclear materials.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable as there are no stricter standards, or additional or different responsibilities or requirements.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Public Health Protection and Safety (Amendment)

902 KAR 100:165. Notices, reports, and instructions to employees.

RELATES TO: KRS 211.842 - 211.852, 211.990(4), 10 C.F.R. Part 19[19.11 to 19.17, 30.7, 30.10]

STATUTORY AUTHORITY: KRS 13B.170, 194A.050(1), [211.090(3),] 211.844

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 operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.844 requires the Cabinet for Health and Family Services to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation establishes notices, instructions, and reports for the protection of workers who may be exposed to radiation in their employment.

Section 1. Posting of Notices to Workers. (1) A licensee or registrant shall post current copies of the following documents relating to standards for protection against radiation:

(a) 1. This administrative regulation;[-and]

2. 902 KAR 100:019, as applicable for users other than radioactive materials users; and

3. 902 KAR 100:185 as applicable for radioactive material users[relating to standards for protection against radiation];

(b) The license, certificate of registration, conditions or documents incorporated into the license by reference, and amendments to the license;

(c) The operating procedures for work under the license or registration; and

(d) A notice of violation involving radiological working conditions, proposed imposition of civil penalty, or order issued as authorized by 902 KAR 100:170, and responses from the licensee or registrant.

(2) If posting of a document specified in subsection (1)(a), (b), or (c) of this section is not practical, the licensee or registrant shall post a notice that describes the document and states where it may be examined.

(3) Cabinet form KR-441, Notice to Employees, incorporated by reference in 902 KAR 100:070, shall be prominently posted by a licensee or registrant.

(4) Documents, notices, or forms posted as required by this section shall:

(a) Appear in a sufficient number of places to permit an individual engaged in work under the license or registration to observe them on the way to or from a particular work location to which the document applies;

(b) Be conspicuous; and

(c) Be replaced if defaced or altered.

(5)(a) Cabinet documents posted as required by subsection (1)(d) of this section shall be posted within two (2) working days after receipt of the documents from the cabinet;

(b) The licensee's or registrant's response shall be posted within two (2) working days after dispatch from the licensee or registrant; and

(c) The documents shall remain posted for a minimum of five (5) working days or until action correcting the violation has been completed, whichever is later.

Section 2. Instructions to Workers. (1) An individual who is likely to receive in a year, during the course of employment, an occupational dose in excess of 100 millirems (one (1) mSV) shall be:

(a) Kept informed of the storage, transfer, or use of sources of radiation in the licensee's or registrant's workplace;

(b) Informed of ~~potential health risks~~~~[health protection problems]~~, to the individual and potential offspring, associated with exposure to radioactive material or radiation, and instructed in precautions or procedures to minimize exposure and in the purposes and functions of protective devices employed;

(c) Instructed in, and instructed to observe, to the extent within the worker's control, the applicable requirements of 902 KAR Chapter 100 and licenses issued thereunder for the protection of personnel from exposures to radiation or radioactive material;

(d) Instructed of their responsibility to report promptly to the licensee or registrant a condition that may lead to or cause a violation of the Act, 902 KAR Chapter 100, or license conditions, or unnecessary exposure to radiation or radioactive material;

(e) Instructed in the appropriate response to warnings made in the event of an unusual occurrence or malfunction that may involve exposure to radiation or radioactive material; and

(f) Informed of the radiation exposure reports that workers may request as authorized by Section 3 of this administrative regulation.

(2) In determining the individuals subject to the requirements of this section, a licensee or registrant shall take into consideration assigned activities during normal and abnormal situations involving exposure to radioactive material or radiation that can reasonably be expected to occur during the life of a licensed or registered facility. The extent of the instructions shall be commensurate with potential radiological health protection problems in the workplace.

Section 3. Notifications and Reports to Individuals. (1) Radiation exposure data for an individual and the results of any measurements, analyses, and calculations of radioactive material deposited or retained in the body of an individual, shall be reported to the individual as specified in this section.

(2) The information reported shall include data and results obtained pursuant to cabinet regulations~~[as required by 902 KAR Chapter 100]~~, orders, or license conditions as shown in records maintained by the licensee or registrant~~[as required by 902 KAR 100:019, Section 34]~~.

(3) Each notification and report shall:

(a) Be in writing;

(b) Include appropriate~~[the following]~~ identifying data:

1. The name of the licensee or registrant;
2. The name of the individual; and
3. The individual's identification or Social Security number~~[.]~~;

(c) Include the individual's exposure information; and

(d) Contain the following statement: "This report is furnished to you under the provisions of the Kentucky Cabinet for Health and Family Services' radiation administrative regulation~~[regulations]~~, 902 KAR 100:165. You should preserve this report for further reference."

(4) Each licensee or registrant shall make dose information available to workers as shown in records maintained by the licensee or registrant under the provisions of 902 KAR 100:185.

(5) The licensee or registrant shall provide an annual report to each individual monitored under 902 KAR Chapter 100 of the dose received in that monitoring year if:

(a) The individual's occupational dose exceeds 1 mSv (100 mrem) TEDE or 1 mSv (100 mrem) to any individual organ or tissue; or

(b) The individual requests his or her annual dose report.

~~(6) [A licensee or registrant shall advise the worker annually of the worker's exposure to radiation or radioactive material as shown in records maintained by the licensee or registrant required by 902 KAR 100:019, Section 34.]~~

(5) At the request of a worker formerly engaged in licensed activities~~[work]~~ controlled by the licensee or ~~[the] registrant~~, each~~[a]~~ licensee or registrant shall furnish to the worker a report of the worker's exposure to radiation or to radioactive material. The report shall:

(a) Be furnished within thirty (30) days from the time the request is made, or within thirty (30) days after the exposure of the individual has been determined by the licensee or registrant, whichever is later~~[.]~~;

(b) Cover the period of time the worker's activities involved exposure to radiation from radioactive material~~[materials]~~ licensed

by~~[, or radiation machines registered with,]~~ the cabinet; and

(c) Include the dates and locations of licensed activities~~[work under the license or registration]~~ in which the worker participated during this period.

~~(7) [(6)]~~ If a licensee or registrant is required~~[, pursuant to 902 KAR 100:019, Sections 40, 41, and 42,]~~ to report to the cabinet an exposure of an individual to radiation or radioactive material, the licensee or the registrant shall also provide the individual a report on the exposure data included in the report to the cabinet. The reports shall be transmitted to the individual at a time not later than the transmittal to the cabinet.

~~(8) [(7)]~~(a) At the request of a worker who is terminating employment with the licensee or registrant that involved~~[in work involving]~~ exposure to radiation or radioactive material during the current year, the licensee or registrant shall provide to the worker, or to the worker's designee, at termination a written report regarding the radiation dose received by that worker from operations of the licensee or registrant during the current year or fraction thereof.

(b) If the most recent individual personnel monitoring results are not available at the time of termination, a written estimate of the dose shall be provided.

(c) Estimated doses shall be clearly indicated as estimated doses.

Section 4. Presence of Representatives of Licensees or Registrants and Workers during Inspection. (1) A licensee or registrant shall afford to the cabinet at all reasonable times opportunity to inspect materials, machines, activities, facilities, premises, and records required by 902 KAR Chapter 100.

(2) During an inspection, cabinet inspectors may consult privately with workers as specified in Section 5 of this administrative regulation. The licensee or registrant may accompany cabinet inspectors during other phases of an inspection.

(3) If, during the inspection, an individual has been authorized by the workers to represent them during cabinet inspections, the licensee or registrant shall notify the inspectors of the authorization and shall give the workers' representative an opportunity to accompany the inspectors during the inspection of physical working conditions.

(4) The workers' representative shall be routinely engaged in work under control of the licensee or registrant and shall have received instructions as specified in Section 2 of this administrative regulation.

(5) Different representatives of licensees or registrants and workers may accompany the inspectors during different phases of an inspection if there is no resulting interference with the conduct of an inspection. However, only one (1) workers' representative at a time may accompany the inspectors.

(6) With the approval of the licensee or registrant and the workers' representative, an individual who is not routinely engaged in work under control of the licensee or registrant, for example, a consultant to the licensee or registrant or to the workers' representative, shall be afforded the opportunity to accompany cabinet inspectors during the inspection of physical working conditions.

(7) A cabinet inspector shall refuse to permit accompaniment by an individual who deliberately interferes with a fair and orderly inspection.

(8) Unless specifically authorized, an individual accompanying an inspector shall not have access to an area containing information classified by an agency of the U.S. government as a national security interest.

(9) Unless previously authorized by the licensee or registrant, a worker's representative shall not have access to an area containing proprietary information.

Section 5. Consultation with Workers during Inspection. (1) If necessary to conduct an effective and thorough inspection, a cabinet inspector may consult privately with a worker concerning a matter of occupational radiation protection or other matter related to 902 KAR Chapter 100, licenses, or registrations.

(2) During the course of an inspection, a worker may bring to the attention of the inspectors, either orally or in writing, a past or present condition that he or she has reason to believe may have contributed to or caused a violation of the Act, 902 KAR Chapter 100, or license condition, or an unnecessary exposure of an individual to radiation from licensed radioactive material or a registered radiation machine under the licensee's or registrant's control. Any[A] written notice shall comply with the requirements of Section 6(1) of this administrative regulation.

(3) The requirements of subsection (2) of this section shall not be interpreted as authorization to disregard instructions required by Section 2 of this administrative regulation.

Section 6. Requests by Workers for Inspections. (1)(a) A worker or representative of workers who believes that a violation of the Act, 902 KAR Chapter 100, or a license condition exists, or has occurred in work under a license or registration with regard to radiological working conditions in which the worker is engaged, may request an inspection by giving notice of the alleged violation to the Cabinet for Health and Family Services, Radiation Health Branch.

(b) The notice shall:

1. Be in writing;
2. Set forth the specific grounds for the notice; and
3. Be signed by the worker or representative of the workers.

(c) A copy shall be provided to the licensee or registrant by the cabinet no later than at the time of inspection. If the worker giving the notice requests, his or her name and the name of individuals referred to in the notice shall not appear in the copy or on a record published, released, or made available by the cabinet, except for good cause shown.

(2) In accordance with 10[49] C.F.R. 19.16, if, upon receipt of the notice, the Manager, Radiation Health Branch, determines that the complaint meets the requirements established in subsection (1) of this section, and that there are reasonable grounds to believe that the alleged violation exists or has occurred, the manager of the Radiation and Health Branch shall cause an inspection to be made as soon as practicable, to determine if the alleged violation exists or has occurred. An inspection authorized by this section may not be limited to matters referred to in the complaint.

(3) A licensee, registrant, contractor, or subcontractor of a licensee or registrant, shall not discharge or discriminate against a worker because the worker has:

- (a) Filed a complaint;
- (b) Instituted or caused to be instituted a proceeding under 902 KAR 100:170;
- (c) Testified or is about to testify in a proceeding; or
- (d) Exercised an option on behalf of himself, herself, or others afforded by this administrative regulation.

Section 7. Inspections not Warranted; Informal Review. (1)(a) If the Cabinet for Health and Family Services, Radiation Health Branch determines, with respect to a complaint under Section 6 of this administrative regulation, that an inspection is not warranted because there are no reasonable grounds to believe that a violation exists or has occurred, the cabinet shall notify the complainant in writing of the determination.

(b) The complainant may obtain a review of the determination by submitting a written statement of position with the commissioner, Department for Public Health. The commissioner shall provide the licensee or registrant with a copy of the statement by certified mail excluding, at the request of the complainant, the name of the complainant.

(c) The licensee or registrant may submit an opposing written statement of position with the commissioner, who shall provide the complainant with a copy of the statement by certified mail.

(2) Upon the request of the complainant, the commissioner shall hold an administrative conference[hearing] in accordance with 902 KAR 1:400.

(3) If the Radiation Health Branch determines that an inspection is not warranted because the requirements of Section 6(1) of this administrative regulation have not been met, the complainant shall be notified, in writing, of the determination. The

determination shall be without prejudice to the filing of a new complaint meeting the requirements of Section 6(1) of this administrative regulation.

Section 8. Employee Protection. (1) Discrimination by a cabinet licensee, an applicant for a cabinet license, a registrant or a contractor or subcontractor of a cabinet licensee, registrant, or applicant against an employee for engaging in protected activities shall be prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment.

(a) The protected activities include in part:

1. Providing the cabinet or his or her employer information about alleged violations or possible violations of requirements of 902 KAR Chapter 100;

2. Refusing to engage in a practice made unlawful under these requirements, if the employee has identified the alleged illegality to the employer;

3. Requesting the cabinet to institute action against his or her employer for enforcement of these requirements;

4. Testifying in a cabinet proceeding, before Congress, or at a federal or state proceeding regarding a provision, or proposed provision, of 902 KAR Chapter 100; and

5. Assisting or participating in, or is about to assist or participate in, a protected activity.

(b) A protected activity shall retain its protected status even if no formal proceeding is initiated as a result of the employee assistance or participation.

(c) This section shall not be applied to an employee alleging discrimination who, acting without direction from his or her employer or the employer's agent, deliberately causes a violation of the Act or the administrative regulations promulgated under the Act.

(2) An employee who believes that he or she has been discharged or discriminated against for engaging in a protected activity may seek a remedy through an administrative proceeding in the Department of Labor.

(a) The aggrieved employee shall file a complaint within 180 days after the occurrence of the alleged violation with the Kentucky Education and Labor Cabinet, Workplace Standards, Division of Wages and Hours, at <https://labor.ky.gov/standards/Pages/Wages-and-Hours.aspx> [Department of Labor, Employment Standards Administration, Wage and Hour Division].

(b) If warranted by the evidence presented, the Division of Wages and Hours[Kentucky Department of Labor] may order reinstatement, back pay, and compensatory damages as appropriate to the case.

(3) A violation of subsections (1) or (5) of this section or Section 1(3) of this administrative regulation by a cabinet licensee, an applicant for a cabinet license, or a contractor or subcontractor of a cabinet licensee or applicant shall constitute grounds for:

- (a) Denial, revocation, or suspension of the license;
- (b) Imposition of a penalty; or
- (c) Other enforcement action.

(4)(a) An action taken by an employer or others that adversely affects an employee shall be predicated upon nondiscriminatory grounds.

(b) The prohibition applies if the adverse action occurs because the employee has engaged in a protected activity.

(c) An employee's engagement in a protected activity does not automatically render him or her immune from discharge or discipline for legitimate reasons, or from adverse action dictated by nonprohibited considerations.

(5) An agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Kentucky Education and Labor Cabinet[Department of Labor], shall not contain a provision that has the potential to prohibit, restrict, or discourage an employee from participating in protected activity, including providing information to the cabinet or to his or her employer on alleged violations or other matters within cabinet's regulatory responsibilities.

Section 9. Deliberate Misconduct. (1) This section applies to:

- (a) Licensee;
- (b) Registrant;
- (c) Certificate of registration holder;
- (d) Applicant for a license[,] or certificate of registration;
- (e) Employee of any person identified in this section; or
- (f) Contractor, including a supplier, consultant, or subcontractor to any person identified in this section.

(2) Any person identified in subsection (1) of this section shall not:

(a) Engage in deliberate misconduct that causes or may have caused, if not detected, a licensee, registrant, certificate of registration holder, or applicant to be in violation of a rule, administrative regulation, order[,] term, condition, or limitation of a license issued by the cabinet; or

(b) Deliberately submit to the cabinet, a licensee, registrant, certificate of registration holder, an applicant, or a licensee's, certificate holder's, or applicant's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the cabinet.

(3) A person who violates subsection (2) of this section shall be subject to enforcement action in accordance with the procedures in 902 KAR 100:170.

(4) For the purposes of subsection (2)(a) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:

(a) May cause a licensee, registrant, certificate holder, or applicant for a license, registration, or certificate to be in violation of the rule, regulation, order or a term, condition, or limitation of a license, registration, or certificate issued by the cabinet; or

(b) Constitutes a violation or a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, registrant, certificate holder, applicant, or the contractor or subcontractor of any of them.

~~[Section 10. Incorporation by Reference. (1) Form KR-441, "Notice to Employees", edition 2/2011 is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to copyright law, at the Office of the Commissioner of Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. until 4:30 p.m.]~~

STEVEN STACK, M.D., Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: May 26, 2023

FILED WITH LRC: June 7, 2023 at 2:35 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2023, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by August 14, 2023, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2023. 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 the notices, instructions, and reports for the protection of workers who may be exposed to radiation in their employment.

(b) The necessity of this administrative regulation: The Radiation Health Program licenses, registers, and certifies all uses of radiation, conducts inspections, reviews, and validates environmental surveillance data, manages compliance activity, and administers the state emergency response to radiological incidents and emergencies. This administrative regulation ensures workers engaged in activities that use sources of radiation are provided proper notice of the risks associated with these activities and are protected should an incident occur.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.842 requires the cabinet to develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, nonionizing, and electronic product radiation. KRS 211.844 requires the cabinet to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures the protection of workers engaged in activities that use sources of radiation and protects the workers' rights during the inspection process and when reporting violations.

(2) If 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 updates the annual dosage exposure notification requirements, updates the citations to report potential labor violations, and makes other changes necessary for KRS Chapter 13A compliance.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure employees engaged in activities that use sources of radiation are properly protected.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.842 requires the cabinet to develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, nonionizing, and electronic product radiation. KRS 211.844 requires the cabinet to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation ensures employees are aware of health risks associated with exposure to sources of radiation and ensures employee rights are protected.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Radiation Health Branch has issued approximately 400 licenses to users in the fields of medicine, industry, research, and academia, as well as approximately 164 general licenses. All licensees are required to be in compliance with this administrative regulation. This administrative regulation will also impact all employees of licensees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this

administrative regulation or amendment: Licensees will need to be aware of the amendment to this administrative regulation and ensure they are in compliance with the notice, reports, and instructions to employee requirements.

(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 minimal costs to the regulated entities for compliance. The cost associated with compliance include the printing of the required posted materials.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Employees who are exposed to sources of radiation in the course of their work will be aware of the health risks associated with this exposure and will be assured protections should there be a violation of this administrative regulation.

(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: This administrative regulation does not impact costs for the agency.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Radiation Health Branch is funded through a combination of state general fund dollars and fees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees or funding is not needed to implement the requirements of 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? The Radiation Health Branch in the Department for Public Health is the only entity that will be impacted by the amendment to this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13B.170, 194A.050(1), and 211.844.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 require no additional cost to administer.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will require no additional cost to administer.

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 impact the costs of the regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation does not impact the costs of the regulated entities.

(c) How much will it cost the regulated entities for the first year? This administrative regulation will require no additional cost to the regulated entities.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation will require no additional cost 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 (+/-):

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. Atomic Energy Act of 1954, 42 U.S.C. 2021, as amended, and 10 C.F.R. 19.16.

(2) State compliance standards. As an agreement state with the Nuclear Regulatory Commission, the state is required to have a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the state covered by the proposed agreement. The state is required to adopt compliance standards for the protection of the public health, safety, and environment from hazards associated with such material which are equivalent, to the extent practicable, or more stringent than, standards adopted and enforced by the Commission for the same purpose.

(3) Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 2021(a)(3) is to promote orderly regulatory pattern between the Commission and state governments with respect to nuclear development and use and regulation of byproduct, source, and special nuclear materials.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable as there are no stricter standards, or additional or different responsibilities or requirements.

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Long Term Services and Supports
(Amendment)**

907 KAR 1:025. Payment for services provided by an intermediate care facility for individuals with an intellectual disability, a dually-licensed pediatric facility, an institution for mental diseases, or a nursing facility with an all-inclusive rate unit.

RELATES TO: KRS 142.363, 202B.010, 42 C.F.R. 413.9, 413.17, 413.85, 413.90, 413.94, 413.98, 413.106, 413.153, 435.1010, 447.204, 447.272, 483.10, 42 U.S.C. 1395x, 1396a, 1396d

STATUTORY AUTHORITY: KRS 142.363(3), 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 method for determining amounts payable by the Medicaid Program for nursing facility services provided by an intermediate care facility for individuals with an intellectual disability, a dually-licensed pediatric facility, an institution for mental diseases, or a nursing facility with an all-inclusive rate unit.

Section 1. Definitions.

(1) "Allowable cost" means that portion of a facility's cost that is allowed by the department in establishing the reimbursement rate.

(2) "Calculated rate" means the rate effective July 1, 1999 and each July 1 thereafter for:

(a) An intermediate care facility for individuals with an intellectual disability (ICF-IID); or

(b) A nursing facility certified as:

1. A dually-licensed pediatric facility; or

2. An institution for mental diseases.

(3) "Cost-based facility" means a facility that:

(a) The department reimburses for all allowable costs; and

(b) Is either:

1. A dually-licensed pediatric facility;

2. An intermediate care facility for individuals with an intellectual disability; or

3. An institution for mental diseases.

(4) "Cost report" means Cost-based Facility Reimbursement Cost Report Instructions and Cost-based Facility Reimbursement Cost Report.

(5) "Department" means the Department for Medicaid Services or its designee.

(6) "Dually-licensed pediatric facility" means any facility providing both high intensity and low intensity nursing facility services to:

(a) Children under age twenty-one (21);

(b) Residents who were admitted to the facility prior to reaching the age of twenty-one (21) and who remain as residents in the facility after reaching the age of twenty-one (21); or

(c) Residents who were admitted to the facility prior to reaching the age of twenty-one (21) and who were discharged to a different facility and who, but for being older than twenty-one (21), continue to meet the level of care of the dually-licensed pediatric facility[only in the same beds].

(7) "IHS Markit Index" means an indication of changes in health care costs from year to year developed by IHS Markit, or its successor organization.

(8) "Institution for mental diseases" or "IMD" is defined by 42 C.F.R. 435.1010.

(9) "Intermediate care facility for individuals with an intellectual disability" or "ICF-IID" is defined by KRS 202B.010(10).

(10) "Nursing facility" or "NF" means that:

(a) The state survey agency has:

1. Granted an NF license to the facility; and
2. Recommended the NF to the department for certification as a Medicaid provider; and

(b) The department has granted certification for Medicaid participation to the NF.

(11) "Nursing facility with an all-inclusive rate unit" means:

(a) A nursing facility with a distinct part ventilator unit; or

(b) A nursing facility with a distinct part brain injury unit.

(12) "Occupancy factor" means a percentage representing:

(a) A facility's actual occupancy level; or

(b) A minimum occupancy level assigned to a facility if its occupancy level is below the minimum level established in Section 3(17) of this administrative regulation.

(13) "Prospective rate" means a payment rate for routine services based on allowable costs and other factors that, except as specified in Section 3 of this administrative regulation, shall not be retroactively adjusted, either in favor of the facility or the department.

(14) "Routine services" means services covered by the Medicaid Program pursuant to 42 C.F.R. 483.10(f)(11)(i).

(15) "State survey agency" means the Cabinet for Health and Family Services, Office of Inspector General, Division of Health Care.

(16) "Upper payment limit" means the aggregate payment amount as described in 42 C.F.R. 447.272 for inpatient services furnished by state-owned or operated ICF-IIDs.

Section 2. Certified Bed Requirements. Except for an intermediate care facility for individuals with an intellectual disability or a nursing facility with an all-inclusive rate unit, a facility that provides services pursuant to this administrative regulation and desires to participate in the Medicaid Program shall comply with the following requirements:

(1) If the facility has less than ten (10) beds, all of its beds shall participate in the Medicare Program; or

(2) If the facility has ten (10) or more beds, the facility shall have the greater of:

(a) Ten (10) of its Medicaid-certified beds participating in the Medicare Program; or

(b) Twenty (20) percent of its Medicaid-certified beds participating in the Medicare Program.

Section 3. Payment System for a Cost-based Facility. The department's reimbursement system shall include the specific policies, components, or principles established in this section.

(1)(a) Except as specified in this section, prospective payment rates for routine services shall:

1. Be set by the department on a facility-specific basis; and

2. Not be subject to retroactive adjustment.

(b) Prospective rates shall be determined on a cost basis annually, and may be revised on an interim basis by the department.

(c) An adjustment to a prospective rate (subject to the maximum payment for that type of facility) shall be considered if:

1. The facility's increased costs are attributable to:

a. A governmentally imposed minimum wage increase, staffing ratio increase, or level of service increase; and

b. The increase was not included in the IHS Markit Index;

2. A new licensure requirement or new interpretation of an existing requirement by the appropriate governmental agency as issued in an administrative regulation results in changes that affect all facilities within the class; or

3. The facility experiences a governmentally-imposed displacement of residents.

(d) 1. The amount of any prospective rate adjustment resulting from a governmentally-imposed minimum wage increase or licensure requirement change or interpretation as cited in paragraph (c)2. of this subsection shall not exceed the amount by which the cost increase resulting directly from the governmental action exceeds on an annualized basis the inflation allowance amount included in the prospective rate for the general cost area in which the increase occurs. For purposes of this determination, costs shall be classified into the following two (2) general areas:

- a. Salaries; and
- b. Other.

2. The effective date of an interim rate adjustment shall be the first day of the month in which the adjustment is requested or in which the cost increase occurred, whichever is later.

(2)(a) The state shall set a uniform rate year for a cost-based facility (July 1 - June 30) by taking the latest available cost data available as of May 16 of each year and trending the facility costs to July 1 of the rate year. If the latest available cost report data has not been audited or desk-reviewed prior to rate setting for the universal year beginning July 1, a prospective rate based on a cost report that has not been audited or desk-reviewed shall be subject to adjustment when the audit or desk review is completed.

(b) Partial year or budget cost data shall be used if a full year's data is unavailable. Unaudited reports shall be subject to an adjustment to the audited amount.

(c) Other factors relating to costs.

1. If the department has made a separate rate adjustment as compensation to a facility for a minimum wage update, the department shall:

a. Not pay the facility twice for the same costs; and

b. Adjust downward the trending and indexing factors to the extent necessary to remove from the factors costs relating to the minimum wage updates already provided for by the separate rate adjustment.

2. If the trending and indexing factors include costs related to a minimum wage increase:

a. The department shall not make a separate rate adjustment; and

b. The minimum wage costs shall not be deleted from the trending and indexing factors.

3. The maximum payment amounts for the prospective universal rate year shall be adjusted each July 1 so that the maximum payment amount in effect for the rate year shall be related to the cost reports used in setting the facility rates for the rate year.

4. For purposes of administrative ease in computations, normal rounding shall be used in establishing the maximum payment amount, with the maximum payment amount rounded to the nearest five (5) cents.

(3)(a) Except as provided in paragraph (b) of this subsection, interest expense used in setting a prospective rate shall be an allowable cost if permitted pursuant to 42 C.F.R. 413.153 and if the interest expense:

1. Represents interest on:

a. Long term debt existing at the time the provider enters the program; or

b. New long-term debt, if the proceeds are used to purchase fixed assets relating to the provision of the appropriate level of care.

(i) If the debt is subject to variable interest rates found in balloon-type financing, renegotiated interest rates shall be allowable; and

(ii) The form of indebtedness may include mortgages, bonds, notes, and debentures if the principal is to be repaid over a period in excess of one (1) year; or

2. Is for working capital and operating needs that directly relate to providing patient care. The form of indebtedness may include notes, advances, and various types of receivable financing.

(b) Interest on a principal amount used to purchase goodwill or other intangible assets shall not be considered an allowable cost.

(4) The allowable cost for a service or good purchased by a facility from a related organization shall be the cost to the related organization, unless it is demonstrated that the related organization is equivalent to a second party supplier.

(a) Except as provided in paragraph (b) of this subsection, an organization shall be considered a related organization if an individual possesses five (5) percent or more of ownership or equity in the facility and the supplying business.

(b) An organization shall not be considered a related organization if fifty-one (51) percent or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its

related organizations.

(5)(a) Except as provided in paragraph (b) of this subsection, the amount allowable for leasing costs shall not exceed the amount that would be allowable based on the computation of historical costs.

(b) The department shall determine the allowable costs of an arrangement based on the costs of the original lease agreement if:

1. A cost-based facility entered into a lease arrangement as an intermediate care facility prior to April 22, 1976;

2. An intermediate care facility for individuals with an intellectual disability entered into a lease arrangement prior to February 23, 1977; or

3. A nursing facility entered into a lease arrangement as a skilled nursing facility prior to December 1, 1979.

(6) A cost shall be allowable and eligible for reimbursement if the cost is:

(a) Reflective of the provider's actual expenses of providing a service; and

(b) Related to Medicaid patient care pursuant to 42 C.F.R. 413.9.

(7) The following costs shall be allowable:

(a) Costs to related organizations pursuant to 42 C.F.R. 413.17;

(b) Costs of educational activities pursuant to 42 C.F.R. 413.85;

(c) Research costs pursuant to 42 C.F.R. 413.90;

(d) Value of services of nonpaid workers pursuant to 42 C.F.R. 413.94;

(e) Purchase discounts and allowances, and refunds of expenses pursuant to 42 C.F.R. 413.98;

(f) Depreciation on buildings and equipment if a cost is:

1. Identifiable and recorded in the provider's accounting records;

2. Based on historical cost of the asset or, if donated, the fair market value; or

3. Prorated over the estimated useful life of the asset using the straight-line method;

(g) Interest on current and capital indebtedness; or

(h) Professional costs of services of full-time or regular part-time employees not to exceed what a prudent buyer would pay for comparable services.

(8) The following shall not be allowable costs:

(a) The value of services provided by nonpaid members of an organization if there is an agreement with the provider to furnish the services at no cost;

(b) Political contributions;

(c) Legal fees for unsuccessful lawsuits against the Cabinet for Health and Family Services;

(d) Travel and associated costs outside the Commonwealth of Kentucky to conventions, meetings, assemblies, conferences, or any related activities that are not related to NF training or educational purposes; or

(e) Costs related to lobbying.

(9) To determine the gain or loss on the sale of a facility for purposes of determining a purchaser's cost basis in relation to depreciation and interest costs, the methods established in this subsection shall be used for changes of ownership occurring before July 18, 1984.

(a)1. The actual gain on the sale of the facility shall be determined; and

2. There shall be added to the seller's depreciated basis two-thirds (2/3) of one (1) percent of the gain for each month of ownership since the date of acquisition of the facility by the seller to arrive at the purchaser's cost basis.

(b) Gain shall be the amount in excess of a seller's depreciated basis as computed under program policies at the time of a sale, excluding the value of goodwill included in the purchase price.

(c) A sale shall be any bona fide transfer of legal ownership from an owner to a new owner for reasonable compensation, which shall usually be fair market value. A lease purchase agreement or other similar arrangement that does not result in a transfer of legal ownership from the original owner to the new owner shall not be considered a sale until legal ownership of the property is

transferred.

(d) If an enforceable agreement for a change of ownership was entered into prior to July 18, 1984, the purchaser's cost basis shall be determined pursuant to paragraphs (a) through (c) of this subsection.

(10) Valuation of capital assets.

(a) An increase in valuation in relation to depreciation and interest costs shall not be allowed for a change of ownership occurring after July 18, 1984 and before October 1, 1985.

(b) For a bona fide change of ownership entered into on or after October 1, 1985, the depreciation and interest costs shall be increased in valuation in accordance with 42 U.S.C. 1395x(v)(1)(O)(i).

(11)(a) A facility shall maintain and make available any records and data necessary to justify and document:

1. Costs to the facility; and
2. Services performed by the facility.

(b) The department shall have unlimited on-site access to all of a facility's fiscal and service records for the purpose of:

1. Accounting;
2. Auditing;
3. Medical review;
4. Utilization control; and
5. Program planning.

(12) The requirements established in this subsection shall apply to an annual cost report.

(a) A year-end cost report shall contain information relating to prior year cost, and shall be used in establishing prospective rates and setting ancillary reimbursement amounts.

(b) A new item or expansion representing a departure from current service levels for which the facility requests prior approval by the department shall be so indicated with a description and rationale as a supplement to the cost report.

(c) Department approval or rejection of a projection or expansion shall be made on a prospective basis in the context that, if an expansion and related costs are approved, they shall be considered when actually incurred as an allowable cost. Rejection of an item or costs shall represent notice that the costs shall not be considered as part of the cost basis for reimbursement. Unless otherwise specified, approval shall relate to the substance and intent rather than the cost projection.

(d) If a request for prior approval of a projection or expansion is made, absence of a response by the department shall not be construed as approval of the item or expansion.

(13)(a) The department shall perform a desk review of each year-end cost report and ancillary service cost to determine the necessity for and scope of an audit in relation to routine and ancillary service cost.

(b) If a field audit is not determined to be necessary, the cost report shall be settled without an audit.

(c) A desk review or field audit shall be used for purposes of verifying cost to be used in setting the prospective rate or for purposes of adjusting prospective rates that have been set based on unaudited data.

(d) Audits may be conducted annually or at less frequent intervals.

(14) A year-end adjustment of the prospective rate and a retroactive cost settlement shall be made if:

(a) An incorrect payment has been made due to a computational error (other than an omission of cost data) discovered in the cost basis or establishment of the prospective rate;

(b) An incorrect payment has been made due to a misrepresentation on the part of a facility (whether intentional or unintentional);

(c) A facility is sold and the funded depreciation account is not transferred to the purchaser; or

(d) The prospective rate has been set based on unaudited cost reports and the prospective rate is to be adjusted based on audited reports with the appropriate cost settlement made to adjust the unaudited prospective payment amounts to the correct audited prospective payment amounts.

(15) A facility shall provide the services mandated in 42 C.F.R.

483.10(f)(11)(i).

(16) A facility shall submit to the department the data required for determining the prospective rate no later than sixty (60) days following the close of the facility's fiscal year. This time limit may be extended at the specific request of the facility with the department's concurrence.

(17) Allowable prior year cost, trended to the beginning of the rate year and indexed for inflation, shall be subject to adjustment based on a comparison of costs with a non-state, privately-owned facility's occupancy factor.

(a) An occupancy factor shall not be less than actual bed occupancy, except that it shall not exceed ninety-eight (98) percent of certified bed days (or ninety-eight (98) percent of actual bed usage days, if more, based on prior year utilization rates).

(b) A minimum occupancy factor shall be ninety (90) percent of certified bed days for a nonstate, privately-owned facility with less than ninety (90) percent certified bed occupancy.

(c) The department may impose a lower occupancy factor for a newly constructed or newly participating nonstate, privately-owned facility, or for an existing nonstate, privately-owned facility suffering a patient census decline as a result of a newly constructed or opened competing facility serving the same area.

(d) The department may impose a lower occupancy factor during the first two (2) full fiscal years an existing cost-based nonstate, privately-owned facility participates in the program under this payment system.

(18) A provider tax on a cost-based facility shall be considered an allowable cost.

(19) All other costs shall be:

- (a) Other care-related costs;
- (b) Other operating costs;
- (c) Capital costs; or
- (d) Indirect ancillary costs.

(20) Basic per diem costs for each major cost category (nursing services costs and all other costs) shall be the calculated rate arrived at after otherwise allowable costs are trended and adjusted in accordance with the:

- (a) IHS Markit Index inflation factor; and
- (b) Occupancy factor for a nonstate, privately owned facility.

(21) Maximum allowable costs shall be the maximum amount that may be allowed to a facility as reasonable cost for the provision of a supply or service while complying with limitations expressed in related federal or state administrative regulations.

(22) Nursing services costs shall be the direct costs associated with nursing services.

(23) State-owned or operated ICF-IID reimbursement for noncapital routine services shall be subject to an upper payment limit. The upper payment limit shall:

- (a) Be an aggregate limit on ICF-IID reimbursement paid by the department;
- (b) Equal 112 percent of the average of aggregate cost for a state fiscal year;
- (c) Be revised annually by the IHS Markit Index using the most recent full year of Medicaid paid days;
- (d) Not be rebased more frequently than every three (3) years; and
- (e) Use as its base year the State Fiscal Year 2005.

(24) The department shall retroactively cost settle state-owned or operated ICF-IID reimbursement for non-capital routine services beginning with the cost report period November 1, 2005 through June 30, 2006, as mandated by the Centers for Medicare and Medicaid Services in accordance with 42 U.S.C. 1396a(a)(30). Retroactive settlement shall entail:

(a) Comparing interim payments with the properly apportioned cost of Medicaid services rendered. Cost report data shall be used to determine properly apportioned costs;

(b) A tentative cost report settlement based upon:

1. Eighty (80) percent of any amount due the facility after a preliminary review is performed; or
2. 100 percent settlement of any liability due the department; and

(c) A final cost report settlement after the allowed billing period has elapsed for the dates of service identified within the cost

report.

(25) The department, regarding state-owned or operated ICF-IID reimbursement for noncapital routine services, shall:

(a) Use projected data in order to approximate as closely as possible an interim rate expected to correspond to post-settlement cost; and

(b) Adjust interim rates up or down if necessary to approximate a rate corresponding as close as possible to anticipated post-settlement cost.

Section 4. Prospective Rate Computation for a Cost-based Facility. The prospective rate for a cost-based facility shall reflect:

(1) The adjusted allowable cost for the facility; and

(2) Except for a state-owned or operated facility, the facility's occupancy factor. A state-owned or operated facility's occupancy factor shall not be factored into the facility's prospective rate.

Section 5. Ancillary Services. (1) Except for an intermediate care facility for individuals with an intellectual disability, an ancillary service shall be a direct service for which a charge is customarily billed separately from a per diem rate including:

(a) Ancillary services pursuant to 907 KAR 1:023; or

(b) Laboratory procedures or x-rays if ordered by a:

1. Physician;

2. An advanced practice registered nurse (APRN) if the laboratory test or x-ray is within the scope of the APRN's practice; or

3. Physician assistant if:

a. Authorized by the supervising physician; and

b. The laboratory test or x-ray is within the scope of the physician assistant's practice.

(2) For an intermediate care facility for individuals with an intellectual disability, an ancillary service shall be a direct service for which a charge is customarily billed separately from a per diem rate including:

(a) Ancillary services pursuant to 907 KAR 1:023;

(b) Laboratory procedures or x-rays if ordered by a:

1. Physician;

2. An APRN if the laboratory test or x-ray is within the scope of the APRN's practice; or

3. Physician assistant if:

a. Authorized by the supervising physician; and

b. The laboratory test or x-ray is within the scope of the physician assistant's practice; or

(c) Psychological or psychiatric therapy.

(3) Ancillary service.

(a) Reimbursement shall be subject to a year-end audit, retroactive adjustment, and final settlement.

(b) Costs shall be subject to allowable cost limits pursuant to 42 C.F.R. 413.106.

(4) For ancillary services, the department shall utilize an NF's prior year cost-to-charge ratio, based on the prior year's cost report as of May 31, as the percentage to be used for interim reimbursement purposes for the following year. (For example, if an NF's cost-to-charge ratio for SFY 2001 is seventy-five (75) percent, the department shall reimburse the NF, on an interim basis, seventy-five (75) percent of billed charges for SFY 2002.)

(5) An NF without a prior year cost report may submit to the department a percentage to be used for interim reimbursement purposes for ancillary services.

(6) If an NF has been reimbursed for ancillary services at an interim percentage above its allowable cost-to-charge ratio for a given year, the department shall decrease the interim percentage for the following year by no more than twenty-five (25) percentage points unless:

(a) A retroactive adjustment of an NF's reimbursement for the prior year reveals an overpayment by the department exceeding twenty-five (25) percent of billed charges; or

(b) An evaluation of an NF's current billed charges indicates that the NF's charges exceed, by greater than twenty-five (25) percent, average billed charges for other comparable facilities serving the same area.

Section 6. Reimbursement for a Nursing Facility With a Distinct Part Ventilator Unit.

(1)(a) Except as provided by paragraph (b) of this subsection, a nursing facility with a distinct part ventilator unit shall be paid at an all-inclusive fixed rate for services provided in the distinct part ventilator unit.

(b) The all-inclusive fixed rate required by paragraph (a) of this subsection shall not include payment for drugs, which shall be reimbursed through the pharmacy program established in 907 KAR Chapter 23.

(2) A distinct part ventilator unit shall:

(a) Have a minimum of twenty (20) beds;

(b) Maintain a census of fifteen (15) patients; and

(c) Base the patient census upon:

1. The quarter preceding the beginning of the rate year; or

2. The quarter preceding the quarter for which certification is requested if the facility did not qualify for participation as a distinct part ventilator unit at the beginning of the rate year.

(3)(a) The fixed rate for a hospital-based facility shall be \$583.82 per day effective for SFY 2006, and shall be increased or decreased pursuant to subsection (4) of this section.

(b) The department shall reimburse a freestanding facility:

1. A fixed rate of \$317.29 per day effective for SFY 2006, and shall be increased or decreased pursuant to subsection (4) of this section; and

2. An add-on to the fixed rate in accordance with KRS 142.363.

(4) The fixed rates established in subsection (3) of this section shall be increased or decreased based on the IHS Markit Index rate of inflation indicator for the nursing facility services for each rate year.

(5) Costs of a distinct part ventilator unit in a nursing facility shall be excluded from allowable costs for purposes of rate setting and settlement of cost-based nursing facility cost reports.

Section 7. Reimbursement for a Nursing Facility with a Distinct Part Brain Injury Unit.

(1) In order to participate in the Medicaid Program as a brain injury provider, a nursing facility with a distinct part brain injury unit shall:

(a) Be Medicare and Medicaid certified;

(b) Designate as a brain injury unit at least ten (10) certified beds that are physically contiguous and identifiable;

(c) After the first year of participation, be accredited by:

1. The Commission on Accreditation of Rehabilitation Facilities (CARF); or

2. The Joint Commission; and

(d) Establish written policies regarding administration and operations, the facility's governing authority, quality assurance, and program evaluation.

(2)(a) Except as provided in subsection (3) of this section and paragraph (b) of this subsection, a nursing facility with a distinct part brain injury unit providing preauthorized specialized rehabilitation services for persons with brain injuries shall be paid at an all-inclusive fixed rate, which shall be set at \$530 per diem for services provided in the brain injury unit.

(b) The all-inclusive fixed rate required by paragraph (a) of this subsection shall not include payment for drugs, which shall be reimbursed through the pharmacy program established in 907 KAR Chapter 23.

(3)(a) Except as provided by paragraph (b) of this subsection, a facility providing preauthorized specialized rehabilitation services for persons with brain injuries with rehabilitation complicated by neurobehavioral sequelae shall be paid an all-inclusive negotiated rate, which shall not exceed the facility's usual and customary charges.

(b) The all-inclusive fixed rate required by paragraph (a) of this subsection shall not include payment for drugs, which shall be reimbursed through the pharmacy program established in 907 KAR Chapter 23.

(c) The negotiated rate established pursuant to paragraph (a) of this subsection shall be:

1. A minimum of the approved rate for a Medicaid certified brain injury unit;

2. A maximum of the lesser of the average rate paid by all payers for this service; or
3. The facility's usual and customary charges.

Section 8. Appeal Rights. A participating facility may appeal department decisions as to the application of this administrative regulation as it impacts the facility's reimbursement in accordance with 907 KAR 1:671, Sections 8 and 9.

Section 9. Reimbursement for Required Services Under the Preadmission Screening Resident Review (PASRR) for a Nursing Facility with a Distinct Part Ventilator Unit, a Nursing Facility with a Distinct Part Brain Injury Unit, an IMD, or a Dually-licensed Pediatric Facility.

(1) Prior to an admission of an individual, a facility shall conduct a level I PASRR in accordance with 907 KAR 1:755, Section 4.

(2) The department shall reimburse a facility for a covered service delivered to an individual if the facility complies with the requirements of 907 KAR 1:755.

(3) Failure to comply with 907 KAR 1:755 may be grounds for termination of a facility's participation in the Medicaid Program.

Section 10. Reimbursement Provisions. (1) Each of the following types of facilities participating in the Medicaid Program shall be reimbursed in accordance with this administrative regulation:

- (a) A nursing facility with a distinct part brain injury unit;
- (b) A nursing facility with a distinct part ventilator unit;
- (c) A nursing facility designated as an institution for mental diseases;
- (d) A dually-licensed pediatric facility; or
- (e) An intermediate care facility for individuals with an intellectual disability.

(2) A payment made to a facility governed by this administrative regulation shall:

- (a) Be made in accordance with the requirements established in 907 KAR 1:022; and
- (b) Be subject to the limits established in 42 C.F.R. 447.272.

Section 11. Supplemental Payments to Dually-licensed Pediatric Facilities.

(1) Beginning July 1, 2002 and annually thereafter, the department shall establish a pool of \$550,000 to be distributed to facilities qualifying for supplemental payments in accordance with subsection (2) of this section.

(2) Based upon its pro rata share of Medicaid patient days compared to total patient days of all qualifying facilities, a dually-licensed pediatric facility shall qualify for a supplemental payment if:

- (a) Funding is available; and
- (b) The facility:
 1. Is located within the Commonwealth of Kentucky;
 2. Has a Medicaid occupancy rate at or above eighty-five (85) percent;
 3. Only provides services to:
 - a. Children under age twenty-one (21); and
 - b. Residents who were admitted to the facility prior to reaching the age of twenty-one (21) and who remain as residents in the facility after reaching the age of twenty-one (21); or
 - c. Residents who were admitted to the facility prior to reaching the age of twenty-one (21) and who were discharged to a different facility and who, but for being older than twenty-one (21), continue to meet the level of care of the dually-licensed pediatric facility; and
 4. Has forty (40) or more licensed beds.
- (3) A supplemental payment to a facility meeting the criteria established in subsection (2) of this section shall:
 - (a) Apply to services provided on or after July 1, 2002;
 - (b) Be made on a quarterly basis; and
 - (c) Not be subject to the cost settlement provisions established in Section 3 of this administrative regulation.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Cost-based Facility Reimbursement Cost Report Instructions", April 2000 Edition; and
- (b) "Cost-based Facility Reimbursement Cost Report", April 2000 Edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law[.];

(a) At the Department for Medicaid Services, 275 East Main Street, [6th Floor West,] Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site located at <https://www.chfs.ky.gov/agencies/dms/dpo/bpb/Pages/nursingfacilities.aspx>.

STEVEN STACK, M.D., Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: May 29, 2023

FILED WITH LRC: June 7, 2023 at 2:35 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2023, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by August 14, 2023, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2023. 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 Jonathan Scott

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the method for determining amounts payable by the Medicaid program for nursing facility services provided by an intermediate care facility for individuals with an intellectual disability, a dual licensed pediatric facility, an institution for mental diseases, or a nursing facility with an all-inclusive rate unit.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish the Department for Medicaid Services' reimbursement provisions and requirements for institutional facilities that are reimbursed on a cost basis.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by establishing the Department for Medicaid Services' reimbursement provisions and requirements for institutional facilities that are reimbursed on a cost basis.

(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 Department for Medicaid Services' reimbursement provisions and requirements for institutional facilities that are reimbursed on a cost basis.

(2) If 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 addresses dually-licensed pediatric facilities. With this amendment and approval of a state plan amendment it will be possible for individuals to turn older than the age of twenty-one (21) while within a dually-licensed pediatric facility and remain in care at that facility.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to update expanded eligibility opportunities for dually licensed pediatric facilities.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by implementing a needed state plan amendment to expand eligibility within dually-licensed pediatric facilities.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by implementing a state plan amendment to expand eligibility within dually-licensed pediatric facilities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any dually-licensed pediatric facility. Children and younger adults who continue to need the specialized care of a dually-licensed pediatric facility after the age of 21.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Entities will need to provide covered services as a dually-licensed pediatric facility.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed by the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Dually-licensed pediatric facilities will be able to provide and continue to provide coverage to an additional population of vulnerable individuals.

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

(a) Initially: The department anticipates no additional costs in implementing this administrative regulation.

(b) On a continuing basis: The department anticipates no additional costs on a continuing basis 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 general and restricted 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 requirements established herein apply to all regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(30)(A), 42 U.S.C. 1396a(a)(13)(A), and 42 C.F.R. 447.204.

(2) State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the

provision of medical assistance to Kentucky's indigent citizenry.

(3) Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(30)(A) requires a state's Medicaid program to "provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1396b(i)(4) of this title) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area." 42 U.S.C. 1396a(a)(13)(A) requires "a public process for determination of rates of payment" for nursing facility services and services for intermediate care facilities for individuals with an intellectual disability. 42 C.F.R. 447.204 requires Medicaid programs' reimbursement to be "sufficient to enlist enough providers so that services under the plan are available to beneficiaries at least to the extent that those services are available to the general population."

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Neither stricter nor additional standards nor responsibilities are imposed.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by 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 205.520 and 42 C.F.R. 447.204

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 projects no revenue will initially be generated by the amendment to 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? DMS projects no revenue will be generated in subsequent years by the amendment to this administrative regulation.

(c) How much will it cost to administer this program for the first year? The department anticipates no additional costs in administering this program in the first year.

(d) How much will it cost to administer this program for subsequent years? The department anticipates no additional costs in administering this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(Amendment)

921 KAR 3:020. Financial requirements.

RELATES TO: KRS 205.200(8), 7 C.F.R. Part 273, 7 U.S.C. 2014, 29 U.S.C. 3174[2804-2934], 38 U.S.C. 1833, 42 U.S.C. 601-619, 1382a(b)(4)(B)(iv), 4951-4960, 9902(2), 12501-12604

STATUTORY AUTHORITY: KRS 194A.010(2), 194A.050(1), 205.1783(1), 7 C.F.R. 271.4, 7 U.S.C. 2011-2029

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the commonwealth[Commonwealth]. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 205.1783(1)(f) requires the cabinet to promulgate administrative regulations necessary to administer a standard medical deduction required by KRS 205.1783(1)(b)2. 7 U.S.C. 2011 to 2029 and 7 C.F.R. 271.4 authorize the cabinet to administer a Supplemental Nutrition Assistance Program (SNAP) within the state and prescribe the manner in which the program shall be implemented. This administrative regulation establishes the financial eligibility requirements used by the cabinet in the administration of SNAP. In addition, 7 U.S.C. 2014 allows states to exclude additional types of income and resources if these specific types of income and resources are not counted in the state's Temporary Assistance for Needy Families (TANF) or Medicaid programs[Programs].

Section 1. Financial Eligibility Requirements.

(1) As established in 7 C.F.R. Part 273, national uniform standards of financial eligibility for SNAP shall be composed of the following criteria:

(a) Income limitations; and

(b) Resource limitations.

(2) The income eligibility standards shall be:

(a) Derived from the federal income poverty guidelines as defined in 42 U.S.C. 9902(2) for the forty-eight (48) contiguous states; and

(b) Adjusted annually each October 1, as published in the Federal Register.

Section 2. Countable Income. All income not excluded by Section 3 of this administrative regulation shall be considered in determining eligibility, including the following:

(1) Wages earned by a household member, including wages received by a striker as established in 921 KAR 3:035, Section 5(10);

(2) The gross income of a self-employment enterprise, including the total gain from the sale of capital goods or equipment related to the business, excluding the cost of doing business;

(3) Training allowance from vocational and rehabilitative programs recognized by federal, state, or local governments, to the extent that the allowances are not reimbursements;

(4) Volunteers in Service to America (VISTA) payments pursuant to 42 U.S.C. 4951 to 4960, unless specifically excluded in accordance with 7 C.F.R. 273.9(c)(10)(iii);

(5) The earned or unearned income of an ineligible household member or nonhousehold member as established in 921 KAR 3:035, Section 5(3) and (4);

(6) Assistance payments from federal or federally-aided public assistance including:

(a) Supplemental security income or "SSI";

(b) Kentucky Transitional Assistance Program or "KTAP"["K-TAP"] in accordance with 921 KAR 2:016;

(c) General assistance programs;

(d) Other assistance programs based on need; or

(e) Kinship care in accordance with 922 KAR 1:130;

(7) Annuities;

(8) Pensions;

(9) Retirement, veteran's, or disability benefits;

(10) Worker's or unemployment compensation;

(11) Strike pay;

(12) Old-age survivors or Social Security benefits;

(13) Except as excluded in Section 3(16) of this administrative regulation, foster care payments for a child or adult;

(14) Gross income derived from rental property, minus the cost of doing business. This income shall be considered as earned income if the household member is actively engaged in the management of the property an average of twenty (20) hours or more per week;

(15) Wages earned by a household member that are garnished or diverted by an employer and paid to a third party for a household expense;

(16) Support or alimony payments made directly to the household from a nonhousehold member. This shall include any portion of a payment returned to the household by the cabinet;

(17) Wages received from a TANF funded work program in accordance with 42 U.S.C. 601-619;

(18) A payment from:

(a) A government sponsored program;

(b) A royalty; or

(c) Similar direct money payments from a source that may be construed as a gain or benefit;

(19) Money withdrawn from a trust fund;

(20) The amount of monthly income deemed to a sponsored immigrant as established in 921 KAR 3:035, Section 5(11);

(21) The portion of means tested assistance monies:

(a) From a:

1. Federal welfare program;

2. State welfare program; or

3. Local welfare program; and

(b) Withheld for the purpose of recouping an overpayment resulting from the household's intentional failure to comply with that program's requirements;

(22) Earnings of an individual who is participating in an on-the-job training program pursuant to 29 U.S.C. 3174[2804-2934] unless the individual is under:

(a) Nineteen (19) years of age; and

(b) The parental control of another adult member; and

(23) An assistance payment for child care or attendant care:

(a) Received from an outside source; and

- (b) Paid to one (1) household member:
 1. From another household member; or
 2. On behalf of another household member.

Section 3. Income Exclusions. The following shall not be considered as income:

- (1) Money:
 - (a) Withheld from:
 1. An assistance payment;
 2. Earned income; or
 3. Another income source; and
 - (b) Voluntarily or involuntarily returned to repay a prior overpayment received from the same income source, except as established in Section 2(21) of this administrative regulation;
- (2)(a) A child support payment if:
 1. Received by a recipient of the KTAP[K-TAP] or kinship care program[Kinship Care Program]; and
 2. It is transferred to the Child Support Enforcement Program in the Department for Income Support to maintain eligibility in KTAP[K-TAP] or kinship care program[Kinship Care Program]; and
- (b) A portion of child support money returned to the household receiving KTAP[K-TAP] or kinship care program[Kinship Care Program] benefits by the cabinet shall not be excluded from income;
- (3) A gain or benefit that is not in the form of money payable directly to the household;
- (4) A monetary payment that is not legally obligated and otherwise payable directly to a household, but is paid to a third party for a household expense;
- (5) Income:
 - (a) Received:
 1. In the certification period; and
 2. Too infrequently or irregularly to be reasonably anticipated; and
 - (b) Not in excess of thirty (30) dollars per quarter;
- (6) Educational income including grants, loans, scholarships, [and] work study income, or other type of financial assistance for education pursuant to KRS 205.200(8), except as defined Section 2(17) of this administrative regulation;
- (7) A loan from a:
 - (a) Private individual; or
 - (b) Commercial institution;
- (8) A reimbursement for a past or future expense, other than normal living expenses;
- (9) Money received and used for the care and maintenance of a third-party beneficiary who is not a household member;
- (10) The earned income of a child who is:
 - (a) A member of the household;
 - (b) An elementary or secondary school student; and
 - (c) Age seventeen (17) years or younger;
- (11) Money received in the form of a nonrecurring lump-sum payment;
- (12) The cost of producing self-employment income. If the cost of producing farm self-employment income exceeds the income derived from self-employment farming, the loss shall be offset against any other countable income in the household;
- (13) Income specifically excluded by 7 U.S.C. 2014 from consideration as income for the purpose of determining SNAP eligibility;
- (14) An energy assistance payment or allowance that is made:
 - (a) In accordance with any federal law, except 42 U.S.C. 601 to 619, including a utility reimbursement made by:
 1. The Department of Housing and Urban Development; or
 2. Rural Housing Service; or
 - (b) For the purpose of a one (1) time payment or allowance made as established in a federal or state law for the costs of:
 1. Weatherization;
 2. Emergency repair; or
 3. Replacement of:
 - a. An unsafe or inoperative furnace; or
 - b. Other heating or cooling device;
- (15) A cash donation based on need received from a nonprofit charitable organization, not to exceed \$300 in a federal fiscal year

quarter;

- (16) A foster care payment for a foster child if the household requests that the child be excluded from the household in determining eligibility;
- (17) Dividend income, in accordance with 7 U.S.C. 2014;
- (18) Additional wages received by a member of the military while deployed to a designated combat zone, in accordance with 7 U.S.C. 2014;
- (19) Veteran's benefits provided to children with identified birth defects born to female Vietnam veterans, in accordance with 38 U.S.C. 1833;
- (20) Income from AmeriCorps programs, except for Volunteers in Service to America, as specified in Section 2(4) of this administrative regulation, in accordance with 42 U.S.C. 12501-12604;
- (21) Income from a YouthBuild program, unless the income is from on-the-job training, as established in Section 2 of this administrative regulation, in accordance with 29 U.S.C. 3174[2934]; and
- (22) Income associated with the fulfillment of an approved Plan for Achieving Self-Support (PASS), in accordance with 42 U.S.C. 1382a(b)(4)(B)(iv).

Section 4. Income Eligibility Standards. Participation in SNAP shall be limited to a household whose income falls at or below the applicable standards, as established by the Food and Nutrition Service in 7 C.F.R. Part 273 that are established in this section:

- (1) A household that contains a member who is elderly or has a disability as defined in 921 KAR 3:010, Section 1(9) or (11), shall have the member's net income compared to 100 percent of the federal income poverty guidelines.
- (2) A household in which a member receives or is authorized to receive cash, in-kind, or other benefits funded under TANF pursuant to 42 U.S.C. 601-619, shall be considered categorically eligible in accordance with 921 KAR 3:030, Section 6(4).
- (3) A household in which all members are recipients of SSI shall be considered categorically eligible in accordance with 921 KAR 3:030, Section 6(3).
- (4)(a) Other households shall have a:
 1. Gross income compared to 130 percent of the federal income poverty guidelines; and
 2. Net income compared to 100 percent of the federal income poverty guidelines.
- (b) A household's gross income as calculated pursuant to paragraph (a) of this subsection shall be the household's total income:
 1. After excluded income has been disregarded in accordance with Section 3 of this administrative regulation; and
 2. Before any deductions in accordance with Section 5 of this administrative regulation have been made.

Section 5. Income Deductions. The following shall be allowable income deductions:

- (1) A monthly standard deduction per household, based on household size, as established in 7 U.S.C. 2014, that shall be periodically adjusted by the Food and Nutrition Service to reflect a change in the cost of living for a prior period of time as determined by the Food and Nutrition Service pursuant to 7 C.F.R. Part 273;
- (2) Twenty (20) percent of gross earned income that is reported within ten (10) days of the date that the change of income becomes known to the household;
- (3) A payment:
 - (a) For the actual cost for the care of:
 1. A child; or
 2. Other dependent; and
 - (b) Necessary for a household member to:
 1. Seek, accept, or continue employment;
 2. Attend training; or
 3. Pursue education preparatory to employment;
- (4) A homeless standard allowance of a shelter expense for a household in which all members are homeless and are not receiving free shelter throughout the calendar month, unless that household verifies higher expenses;

(5) A monthly standard medical deduction or verified actual allowable medical expense [in excess of thirty-five (35) dollars per month] incurred by a household member who meets the definition of being elderly or having a disability, as defined in 921 KAR 3:010, Section 1(9) or (11), and who submits verification of medical expense in excess of thirty-five (35) dollars per month:

- (a) Including:
 1. Medical and dental care;
 2. Hospitalization or outpatient treatment and nursing care;
 3. Medication and medical supplies;
 4. A health insurance premium;
 5. A hospitalization insurance premium;
 6. Dentures, a hearing aid, eyeglasses, prosthetics; or
 7. Similar medical expense; and
- (b) Excluding special diet cost;
- (6) Actual child support payment made by a household member shall be allowed as a deduction if:
 - (a) The household member is legally obligated to pay child support; and
 - (b) Verification is provided showing a payment is currently being made.

Section 6. Monthly Shelter Cost Deduction.

- (1) The monthly shelter cost deduction shall be that amount in excess of fifty (50) percent of the household's income after allowable deductions have been made.
- (2) The shelter deduction shall not exceed the current shelter maximum, except that a household shall not be subject to the maximum if a member is:
 - (a) Elderly; or
 - (b) Disabled.
- (3) The excess shelter maximum shall be adjusted periodically by the Food and Nutrition Service to reflect change in the cost of living.
- (4) Allowable monthly shelter expense shall include the following:
 - (a) Continuing charge for the shelter occupied by the household including:
 1. Rent;
 2. Mortgage;
 3. Payment on mobile home loan;
 4. Condominium and association fees;
 5. Interest on a payment; and
 6. Similar charge leading to ownership of the shelter;
 - (b) Property tax;
 - (c) State and local assessment;
 - (d) Insurance on the structure itself;
 - (e) The cost of:
 1. Heating and cooking fuel;
 2. Cooling;
 3. Electricity;
 4. Water and sewage;
 5. Garbage and trash collection fee;
 6. Telephone standard deduction; and
 7. A fee charged by a utility provider for the initial installation of the utility;
 - (f) The shelter cost for the home if:
 1. Temporarily unoccupied by the household because of:
 - a. Employment or training away from home;
 - b. Illness; or
 - c. Abandonment caused by a natural disaster or casualty loss;
 2. The current occupant is not claiming shelter cost for food stamp purposes; and
 3. The home is not leased or rented during the absence of the household; and
 - (g) A charge for the repair of the home if substantially damaged or destroyed by fire, flood, or other natural disaster, except to the extent the cost is reimbursed by:
 1. A private or public relief agency;
 2. Insurance; or
 3. A similar source.
- (5) The standard utility allowance shall be used to calculate shelter cost for a household:

- (a) Receiving Low Income Home Energy Assistance Program benefits; or
- (b) Incurring cost, separate from its rent or mortgage payment, for:
 1. Heating; or
 2. Cooling (by air conditioning unit only).
- (6) The standard utility allowance shall be adjusted periodically.
- (7) If the household is not entitled to the utility standard or homeless standard allowance, it shall be given the basic utility allowance in accordance with 7 U.S.C. 2014, if the household is billed for two (2) of the following:
 - (a) Electricity (nonheating and noncooling);
 - (b) Water or sewage;
 - (c) Garbage or trash;
 - (d) Cooking fuel; or
 - (e) Telephone service.
- (8) The basic utility allowance shall be adjusted annually.
- (9) A household whose only expense is for telephone service shall be given a telephone standard.
- (10) A household not entitled to a standard specified in subsection (7) or (9) of this section may use actual utility expense to calculate shelter deduction.

Section 7. Resources.

- (1) Uniform national resource standards of eligibility shall be utilized pursuant to 7 C.F.R. 273.8.
- (2) Eligibility shall be denied or terminated if the total value of a household's liquid and nonliquid resources, not exempt pursuant to Section 8 of this administrative regulation, exceed:
 - (a) \$3,500 for a household member;
 1. With a disability as defined in 921 KAR 3:010, Section 1(9); or
 2. Sixty (60) years or older; or
 - (b) \$2,250 for any other household.
- (3) Eligibility shall be denied or terminated for a household receiving one-time lottery or gambling winnings of \$3,500 or more.
- (4) A household that is categorically eligible in accordance with 921 KAR 3:030, Section 6, shall meet the SNAP resource requirement.

Section 8. Exempt Resources. The following resources shall not be considered in determining eligibility:

- (1) All real estate, in accordance with 7 U.S.C. 2014;
- (2) Household goods;
- (3) Personal effects;
- (4) A burial plot;
- (5) The cash value of life insurance policies;
- (6) In accordance with 7 U.S.C. 2014:
 - (a) A tax-preferred retirement account;
 - (b) A prepaid burial account;
 - (c) A licensed or unlicensed vehicle;
 - (d) A recreational vehicle;
 - (e) A resource deemed to an alien from a sponsor or spouse of a sponsor;
 - (f) Principal and accrued interest of an irrevocable trust during a period of unavailability;
 - (g) A tax-preferred educational account; and
 - (h) Another resource that is excluded for SNAP purposes;
- (7) A governmental payment that is designated for the restoration of a home damaged in a disaster, if the household is subject to legal sanction and if funds are not used as intended;
- (8) A resource, of which the cash value is not accessible to the household;
- (9) A resource that has been prorated as income;
- (10) Income that is withheld by the employer to pay a certain expense directly to a third party as a vendor payment, to the extent that the remainder of the withheld income is not accessible to the household at the end of the year; and
- (11) The earned income tax credit income received by a member of the household for a period of twelve (12) months from receipt if the member was participating in SNAP:
 - (a) At the time the credit was received; and
 - (b) Continuously during the twelve (12) month period of

exclusion.

Section 9. Transfer of Resources. A household that has transferred a resource knowingly for the purpose of qualifying or attempting to qualify for SNAP shall be disqualified from participation in the program for up to one (1) year from the date of the discovery of the transfer.

Section 10. Failure to Comply with Other Programs.

(1) Except as provided in subsection (2) of this section, if the benefits of a household are reduced under a federal, state, or local law relating to a means-tested public assistance program for the failure of a member of the household to perform an action required under the law or program, for the duration of the reduction, the SNAP allotment of the household shall be reduced by twenty-five (25) percent.

(2) If the benefits of a household are reduced as defined in a federal, state, or local law relating to a means-tested public assistance program for the failure of a household member to perform a work requirement, the individual shall be subject to the disqualification procedures established in 921 KAR 3:027, Section ~~[5 or] 6 or 7~~.

LESA DENNIS, Acting Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: May 26, 2023

FILED WITH LRC: June 7, 2023 at 2:35 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2023, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by August 14, 2023, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2023. 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 Jonathan Scott

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the financial eligibility qualification criteria for the Supplemental Nutrition Assistance Program (SNAP).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish financial standards used to determine SNAP eligibility.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by establishing the financial eligibility requirements for SNAP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the financial eligibility requirements for

SNAP.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds the option of utilizing a standard medical deduction or actual monthly medical expenses when determining income deductions and eligibility for SNAP applicants who meet the established definitions for elderly or disabled.

(b) The necessity of the amendment to this administrative regulation: This amendment is required by KRS 205.1783(1), originally passed as House Bill 7 in the 2022 Regular Session.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by implementing programs necessary for the proper administration of the cabinet and its programs. KRS 205.1783(1)(b)2. required the cabinet to request a waiver from the United States Department of Agriculture to implement a standard medical deduction waiver for individuals who are sixty (60) years of age or older or are disabled. The waiver was requested by the cabinet and approved by the federal government. KRS 205.1783(1)(f) requires the cabinet to promulgate administrative regulations necessary to administer this section.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation fulfills a statutory requirement to request a waiver for this program and implement it once approved by the federal government.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All SNAP recipients whose households contain individuals who are elderly or disabled may benefit from 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: SNAP recipients who meet the definitions of elderly or disabled will still have to submit verification of medical expenses but will either receive a standard medical deduction or a deduction of their actual medical expenses from their income in determining SNAP eligibility.

(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 incurred by affected households.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Households containing individuals who are elderly or disabled will have their monthly medical expenses deducted from their income in determining SNAP eligibility. This will improve access to SNAP for the elderly and disabled population.

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

(a) Initially: The only cost to implement this program will be that of minor system changes and staff training. Administrative costs are funded 50% by the federal government.

(b) On a continuing basis: Once established, there will be no continuing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SNAP benefits are 100% federally funded. Administrative functions are funded at a 50% state and 50% federal match rate. The funding has been appropriated in the enacted budget.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner for households containing individuals who are elderly or disabled

statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.4, 7 U.S.C. 2011-2029.

(2) State compliance standards. KRS 194A.010(2), 194A.050(1), 205.1783(1).

(3) Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate and granted waiver request.

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

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 administers this program.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 7 C.F.R. 271.4, 7 U.S.C. 2011-2029, KRS 194A.010(2), 194A.050(1), 205.1783(1).

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate new revenue for state or local government, although retailers, grocers, farmers, and local communities benefit from the federal dollars spent through SNAP.

(c) How much will it cost to administer this program for the first year? This administrative regulation amendment will require system design changes and staff training of less than \$500,000. The federal government funds half of all administrative costs for SNAP.

(d) How much will it cost to administer this program for subsequent years? Once the system changes are in place there will be no costs to administer for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This amendment will improve food access for households containing individuals who are elderly or disabled. This will result in a cost savings for these households.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Ongoing cost savings cannot be anticipated at this time.

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

year? There is no cost to affected entities.

(d) How much will it cost the regulated entities for subsequent years? There is no anticipated ongoing costs to affected entities.

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 amendment is not anticipated to have a major economic impact. This administrative regulation will not have a major economic impact. This amendment will improve food access for households containing elderly or disabled individuals and also provide federal funding to grocers, retailers, farmers, and other members of local communities.

NEW ADMINISTRATIVE REGULATIONS

Public comment periods ordinary, non-emergency regulations are at least two months long. For other regulations with open comment periods, please also see last month's [Administrative Register of Kentucky](#).

GENERAL GOVERNMENT CABINET
Registry of Election Finance
(Repealer)

32 KAR 1:046. Repeal of 32 KAR 1:045 and 32 KAR 1:070.

RELATES TO: KRS 121.172(8), 121.180(2)(b), (c), 121.180(9)
STATUTORY AUTHORITY: KRS 121.120(1)(g), (4), 121.172(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(g) grants the Registry the authority to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. KRS 121.120(4) requires the Registry to promulgate administrative regulations and prescribe forms for the making of reports under KRS Chapter 121. KRS 121.172(1) requires the Registry to promulgate administrative regulations to implement provisions permitting a state executive committee of a political party to establish a building fund account. KRS 121.172(8) requires a state executive committee to report all contributions to and expenditures from a building fund account to the Registry of Election Finance on a quarterly basis. KRS 121.180(2)(b) and (c) requires a state executive committee of a political party that has established a building fund account under KRS 121.172 to make full report to the Registry, to be received by the registry within five (5) days after the close of each calendar quarter. The registry must repeal administrative regulations 32 KAR 1:045 and 32 KAR 1:070 because the forms identified in the current regulations no longer exist as separate documents but are now incorporated into other filings into Kentucky Election Finance Management System, the registry's electronic filing system.

Section 1. The following administrative regulations are hereby repealed:

- (1) 32 KAR 1:045. Election Finance Statement – State Executive Committee Building Fund; and
- (2) 32 KAR 1:070. Waiver From Filing Candidate Election Finance Statement.

JOHN R. STEFFEN, Executive Director

APPROVED BY AGENCY: June 14, 2023

FILED WITH LRC: June 15, 2023 at 9:10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2023, at 10:00AM, at the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601. 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. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023, at 11:59 PM. 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: Leslie M. Saunders, General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-2226, fax (502) 573-5622, email LeslieM.Saunders@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leslie Saunders

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation will repeal 32 KAR 1:045 and 32 1:070 and their associated materials incorporated by reference, The "State Executive Committee - Building Fund Election Finance Statement"; and The "Waiver from Filing Candidate Election Finance Statement."

(b) The necessity of this administrative regulation: The paper forms these regulations identify have been superseded by the Registry's electronic filing system and, further, no longer exist as separate forms, but as options on forms identified in other regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifically conforms to the requirements of KRS 121.120(1)(g), as it repeals administrative regulations and materials incorporated that are no longer necessary to carry out the provisions of KRS Chapter 121.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will repeal 32 KAR 1:045 and 32 KAR 1:070 which are forms regulations that are no longer needed.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All candidates, slates of candidates, contributing organizations, and committees as defined in KRS 121.015 in Kentucky are 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: All candidates, slates of candidates, contributing organizations, and committees must file their respective reports via the Kentucky Election Management System as mandated by KRS 121.120(6)(i).

(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.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance will provide the regulated population with efficient access to the administrative body's statutorily mandated electronic filing system.

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

(a) Initially: There will be no initial cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: There will be no cost on a continuous basis to the administrative body to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: While no additional funding will be required for the implementation

and enforcement of this administrative regulation, the administrative body operates solely on 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: It will not be necessary to increase fees or funding to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? No. These forms are no longer applicable to any segment of the regulated entities and tiering is not necessary.

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 Registry of Election Finance.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 121.015, KRS 121.120, and KRS 121.180.

(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 will not generate revenue for the first year.

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

(c) How much will it cost to administer this program for the first year? This program will not cost any additional amount to administer for the first year.

(d) How much will it cost to administer this program for subsequent years? This program will not cost any additional amount to administer for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation will not generate any cost savings for the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation will not generate any cost savings for subsequent years.

(c) How much will it cost the regulated entities for the first year? This administrative regulation will not cost the regulated entities anything for the first year.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation will not cost the regulated entities anything 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)] This administrative regulation will not have a major economic impact.

GENERAL GOVERNMENT CABINET Department of Military Affairs (New Administrative Regulation)

106 KAR 4:020. Commonwealth of Kentucky Military Burial Honor Guard Trust Fund and Military Burial Honor Guard.

RELATES TO: KRS 36.390, 36.392, 36.394, 36.396, 10 U.S.C. 1491

STATUTORY AUTHORITY: KRS 36.390(3), 36.394(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 36.392(1) establishes the Military Burial Honor Guard Trust Fund. KRS 36.390(3) requires the Kentucky Department of Military Affairs to implement and administer this fund and to implement a state burial honor guard program that complies with, and supplements, the federal, United States Department of Defense, Military Funeral Honors Program as established by 10 U.S.C. 1491. This administrative regulation establishes the requirements, policies, procedures, and operational criteria for the Military Burial Honor Guard Program.

Section 1. Definitions.

(1) "Casualty Assistance Office" means the designated United States Department of Defense element for civilian funeral directors to request military funeral honor support.

(2) "Eligible veteran" means a Kentuckian who has met the requirements of Section 3 of this administrative regulation.

(3) "Fund" means the Commonwealth of Kentucky, Military Burial Honor Guard Trust Fund established by KRS 36.392(1) to appropriate monies for the Military Burial Honor Guard Program activities required by KRS 36.390 through 36.396.

(4) "Military funeral honors authorized provider" means any veteran's service organization or other military or civil entity that has been trained to Department of Defense military funeral honors standards recognized by the Department of Defense to provide military funeral honors.

(5) "Selected reserve" means military units and individuals in each reserve component that participates in paid, federal training periods and serves on paid, federal active duty for training and includes members and former members of the Kentucky National Guard.

(6) "Military Burial Honor Guard Program Coordinator" means the representative designated by the Adjutant General of Kentucky to implement the Military Burial Honor Guard Program.

(7) "Military Burial Honor Guard Program" means the program, funded by the Military Burial Honor Guard Trust Fund, to render military funeral honors to eligible Kentucky veterans.

Section 2. Military Burial Honor Guard Trust Fund.

(1) Money derived from the fund shall be expended for an approved program that:

(a) Appropriates monies for activities of the Military Burial Honor Guard Program for costs incurred or deemed necessary by the Department of Military Affairs;

(b) Provides for honorable military burials for Kentuckians who have served their state and nation in the armed forces;

(c) Encourages and assists veteran's organizations and other authorized military funeral honors providers;

(d) Works with public and private sectors to honor and recognize the service and sacrifice of veterans.

(2) Fundraising.

(a) The Fund may accept appropriated monies, gifts, donations, or grants from an individual, a corporation, or government entity.

(b) Gratuitous donations may be accepted by the Fund.

1. Checks shall be made out to the Kentucky State Treasurer.

2. Checks shall be sent to the Adjutant General of Kentucky, Attention: Military Burial Honor Guard Coordinator, Building 100, Boone National Guard Center, 100 Minuteman Parkway, Frankfort, Kentucky 40601-6168.

(3) Incidental costs. Program encumbrances and disbursements shall be approved by the Executive Director, Office of Management and Administration, Department of Military Affairs, if the funeral honor detail meets the standards and requirements set forth in this administrative regulation. In addition, program expenditures shall not be made for a commodity or service otherwise provided by an existing federal or state entitlement or program.

Section 3. Eligibility.

(1) Kentucky Veterans shall be eligible for military honors if the Veteran:

(a) Served the state and nation in the armed forces and was discharged or released under conditions other than dishonorable by means of an honorable or under honorable conditions (general) discharge;

(b) Completed at least one (1) enlistment as a member of the selected reserve or, in the case of an officer, completed the initial obligated service as a member of the selected reserve;

(c) Was a member or former member of the selected reserve, to include the Kentucky National Guard;

(d) Was discharged before completion of the person's initial enlistment as a member of the selected reserve or, in the case of an officer, period of initial obligated service as a member of the selected reserve, for a disability incurred or aggravated in line of duty;

(e) Died while a member of the active component or selected reserve; or

(f) Retired from an active component or selected reserve.

(2) An individual ineligible to receive military honors shall include individuals:

(a) Who have, at any time, been discharged or released from military service with a:

1. Dishonorable discharge;

2. Bad conduct discharge;

3. Dismissal from service awarded by a court-martial;

4. Other than under honorable conditions;

5. Resignation by an officer for the good of the service in lieu of court-martial, which results in a discharge of under other than honorable conditions.

(b) Convicted of a federal or state capital crime not commuted by the Governor or the President;

(c) Convicted of a federal or state crime causing the person to:

1. Be a tier III sex offender for purposes of the Sex Offender Registration and Notification Act; and

2. Sentenced to a minimum of life in prison; or

3. Be sentenced to a period of Ninety-nine (99) years or more; and

4. Have a conviction that has not been commuted.

(d) Who avoided a trial or conviction for crimes established in paragraphs (b) or (c) of this subsection due to death or flight to avoid prosecution.

Section 4. Military Burial Honor Guard Program.

(1) Policy.

(a) The Military Burial Honor Guard Program shall be the burial honor guard program required by KRS 36.392(1) to render military funeral honors and respect to Kentuckians who faithfully defended the Commonwealth of Kentucky and the nation in the armed services.

(b) A Kentucky veteran shall be entitled to military burial honors under the Military Burial Honors Program if:

1. The veteran is eligible under the criteria in Section 1(2) of this administrative regulation; and

2. Monies are available.

(c) The Military Burial Honor Guard Program shall supplement the minimum, two (2) person, flag presentation federal honors

ceremony.

(2) Standards. The Military Burial Honor Guard Program activities shall comply with the standards established by the Department of Defense Military Funeral Honors Program defined in 10 U.S.C. 1491.

(3) Responsibilities.

(a) Military Burial Honor Guard Coordinator. The Military Burial Honor Guard Coordinator shall:

1. Implement this administrative regulation to conduct military funeral honors support by the Kentucky National Guard and other military funeral honors authorized providers;

2. Ensure proper decorum consistent with Department of Defense Military Funeral Honors Program defined in 10 U.S.C. 1491 and including trained personnel, proper equipment, standardized procedures, and quality control of funeral honors details;

3. Validate requests for military funeral honor support received from the Casualty Assistance Office and coordinate with Military Burial Honor Guard Program authorized providers;

4. Ensure adequate funding requests to support the Military Burial Honor Guard Program;

5. Coordinate with active and reserve military, veterans service organizations, and other civilian military funeral honors authorized providers for support and assistance in the conduct of a military funeral honors detail;

6. Serve as the single point of contact for all matters relating to the conduct of military funeral honor details by the Kentucky National Guard;

7. Collect standardized data on all military funeral honors rendered by the Kentucky National Guard and supported by the Military Burial Honor Guard Program; and

8. Receive and coordinate all requests for military funeral honors support from the Casualty Assistance Office, funeral directors, family members or other authorized sources.

(b) Department of Veterans Affairs. The Kentucky Department of Veterans Affairs shall:

1. Support the Department of Military Affairs in the implementation and maintenance of the Military Burial Honor Guard Program;

2. Verify veteran's service organizations as military funeral honors authorized providers;

3. Assist military funeral honors authorized providers in procuring sufficient training aides and equipment to conduct military funeral honors;

(c) Military funeral honors authorized providers. Military funeral honors authorized providers may perform, augment, and supplement state military funeral honors details. The Adjutant General may establish on-going liaison and formal agreements with any Department of Defense recognized military funeral honors authorized provider or other entity within the state to assist with obtaining Department of Defense recognition, training, and support or to further the understanding of the sacrifices made by the deceased.

(4) Military Burial Honor Guard Program procedures. Requesting military funeral honors support.

(a) Funeral directors or families shall contact the appropriate Department of Defense Casualty Assistance Office or the Military Burial Honor Guard Program Coordinator to request military funeral honors support.

(b) This Department of Defense component shall coordinate with the Kentucky Department of Military Affairs or other military element to provide the requested support to eligible veterans based on the service component of the deceased (Kentucky National Guard, other Selected Reserve element, U.S. Army, Air Force, Space Force, Navy, Marine Corps, or Coast Guard).

(c) All requests for military funeral honors support shall be a minimum of forty-eight (48) hours in advance of the requested burial ceremony. The Military Burial Honor Guard Coordinator may, if monies, equipment, and personnel are available to accommodate the late request, waive the forty-eight (48) hour notice requirement.

This is to certify that The Adjutant General (TAG) has reviewed and approved this administrative regulation prior to its adoption, as

required by KRS 36.390 and KRS 36.394.

HALDANE B. LAMBERTON, Major General

APPROVED BY AGENCY: June 1, 2023

FILED WITH LRC: June 15, 2023 at 10:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, August 23, 2023, at 10:30 a.m. Eastern Time at 100 Minuteman Parkway, Bldg. 100, Room 202 (EOC 2nd Floor Conference Room) Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Corey Ann Howard Jackson, Legislative Liaison and Policy Specialist, Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601, phone (502) 330-3323, fax (502) 607-1240, email corey.a.jackson23.nfg@army.mil.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Corey Ann Howard Jackson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements, policies, procedures, and operational criteria for Kentucky's State Military Burial Honor Guard Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to carry out the requirements of KRS 36.390(1) and KRS 36.390(3).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 36.392(1) establishes Kentucky's Military Burial Honor Guard Trust Fund. KRS 36.390(3) requires the Kentucky Department of Military Affairs to implement and administer this fund and to implement a state burial honor guard program which complies with and supplements the federal, United States Department of Defense, Military Funeral Honors Program as prescribed by 10 U.S.C. 1491.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements, policies, procedures and operational criteria for Kentucky's State Military Burial Honor Guard Program.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the Department of Military Affairs, Kentucky Department of Veterans Affairs, the Military Burial Honors Coordinator, Department of Defense Casualty Assistance Offices, military funeral honors authorized providers, the Adjutant General, civilian funeral directors, and military funeral directors.

(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: Department of Military Affairs will implement and administer this fund and to implement a burial honor guard program which supplements and complies with the United States Department of Defense, Military Funeral Honors Program as prescribed by 10 U.S.C. 1491. Kentucky Department of Veterans Affairs will support the Department of Military Affairs in the implementation and maintenance of the state Military Burial Honor Guard Program. This assistance includes the coordination of Department of Defense required training of all veteran's service organization and providing a list of organizations recognized as military funeral honors authorized providers.

Military Burial Honors Coordinator will:

Implement this administrative regulation to conduct military funeral honors support by the Kentucky National Guard and other military funeral honors authorized providers

Ensure proper decorum for funeral honors including appropriate trained personnel and proper equipment, standardized procedures, and quality control of funeral honors details consistent with Department of Defense guidance

Validate requests for military funeral honors support received from the Casualty Assistance Office and coordinate with providers who are authorized to provide military funeral honors details

Be the single point of contact for all matters relating to the conduct of military funeral honors details by the Kentucky National Guard

Receive and coordinate all requests for military funeral honors support from the Casualty Assistance Office and coordinate support with funeral directors, family members or other authorized sources

Department of Defense Casualty Assistance Offices will provide requests from families of the deceased Veteran for military funeral honors support to the military burial honors coordinator.

Military funeral honors authorized providers may perform, augment and supplement state military funeral honors details.

The Adjutant General may establish on-going liaison and formal agreements with any Department of Defense recognized military funeral honors authorized provider or other entity within the state to assist with obtaining Department of Defense recognition, training, and support.

Civilian funeral directors contact the appropriate Department of Defense Casualty Assistance Office on behalf of the Veteran's family, to request military funeral honors support.

Military funeral directors shall provide the former service component of the deceased, i.e., Kentucky National Guard, other Selected Reserve element, U.S. Army, Air Force, Navy, Marine Corps, or Coast Guard.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to these entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These entities will complete their goal to support and further the understanding of the sacrifices made by the deceased Kentucky veterans being honored. The entities will do this through the ceremonial paying of respect and final demonstration of the country's and state's gratitude to those Kentuckians who, in times of war and peace, faithfully defended the state and nation in the armed services.

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

(a) Initially: N/A

(b) On a continuing basis: N/A

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

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

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

(9) TIERING: Is tiering applied? Tiering was not used. The regulation will not reduce or modify substantive regulatory requirements, eliminate some requirements entirely, simplify and reduce reporting and recordkeeping requirements, reduce the frequency of inspections, provide exemptions from inspections and other compliance activities, or delay compliance timetables.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. Military Funeral Honors Program as prescribed by 10 U.S.C. 1491.

(2) State compliance standards. KRS 36.390(3) requires the Kentucky Department of Military Affairs to implement and administer this fund and to implement a state burial honor guard program which complies with and supplements the federal Military Funeral Honors Program as prescribed by 10 U.S.C. 1491.

(3) Minimum or uniform standards contained in the federal mandate. Federal code, through the Secretary of Defense, ensures that upon request, a funeral honors detail is provided for the funeral of any veteran, except when military honors are prohibited. The code sets out the standard minimum for the ceremony which includes the folding of a United States flag, presentation of the flag to the veteran's family, and the playing of Taps.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Department of Military Affairs and Kentucky Department of Veteran's Affairs.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 36.390(3), 36.394(1), KRS 36.390, 36.392, 36.394, 36.396 and 10 U.S.C. 1491.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None. The fund has already been established.

(a) How much 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? No additional revenue will be generated.

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

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

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

Revenues (+/-): No additional revenue will be generated by the regulations.

Expenditures (+/-): No additional expenditures will be incurred.

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? No additional cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No additional cost savings.

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

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

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

Cost Savings (+/-): No additional cost savings will be realized.

Expenditures (+/-): No additional costs will be incurred

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. The administrative regulation will have no economic impact.

GENERAL GOVERNMENT

Department of Agriculture

Office of the Consumer and Environmental Protection (Repealer)

302 KAR 16:071. Repeal of 302 KAR 16:070.

RELATES TO: KRS CHAPTER 363.900-363.908, 16 C.F.R. 306.12, 40 C.F.R. 80.27

STATUTORY AUTHORITY: KRS 363.902, 16 C.F.R. 306.12, 40 C.F.R. 80.27

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.233 requires amusement ride and attraction owners to submit a written report following an accident. This administrative regulation repeals 302 KAR 16:070 because 302 KAR 16:072 will cover the reporting criteria.

Section 1. The following administrative regulations hereby repealed: 302 KAR 16:070. Reports of injuries involving amusement rides and amusement attractions.

RYAN QUARLES, Commissioner of Agriculture

APPROVED BY AGENCY: June 14, 2023

FILED WITH LRC: June 14, 2023 at 3:55 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2023 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This repeals the current reporting requirements, as it is being replaced by another filing.

(b) The necessity of this administrative regulation: This repeals the current reporting requirements, as it is being replaced by

another filing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This repeals the current reporting requirements, as it is being replaced by another filing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This repeals the current reporting requirements, as it is being replaced by another filing.

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

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

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

(c) How the amendment conforms to the content of the authorizing statutes: This filing is a repealer.

(d) How the amendment will assist in the effective administration of the statutes: This filing is a repealer.

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

(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 filing is a repealer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This filing is a repealer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This filing is a repealer.

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

(a) Initially: The KDA estimates \$530,000 total annually.

(b) On a continuing basis: The KDA estimates at least \$530,000 total annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of fees and the KDA general fund.

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

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

(9) TIERING: Is tiering applied? No, all entities are treated the same.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 257 and KRS 263.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 KDA expects to receive \$110,000 annually at current participation levels.

(b) How 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 KDA expects to receive \$110,000 annually at current participation levels.

(c) How much will it cost to administer this program for the first year? The cost to administer this regulation is approximately \$530,000.

(d) How much will it cost to administer this program for subsequent years? The cost to administer for subsequent years is estimated to be at least \$530,000.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(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 is a repealer and will have no financial impact.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This is a repealer and will have no financial impact.

(c) How much will it cost the regulated entities for the first year? This is a repealer and will have no financial impact.

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

This is a repealer and will have no financial impact.

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)] Fees will not exceed the major economic impact threshold.

GENERAL GOVERNMENT

Department of Agriculture

Office of the Consumer and Environmental Protection (New Administrative Regulation)

302 KAR 16:072. Notification of occurrence involving an amusement ride or attraction.

RELATES TO: KRS 247.233

STATUTORY AUTHORITY: KRS 247.233

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.233 requires amusement ride and attraction owners to notify the department following an accident or specified incident and requires the department to conduct mandatory investigations of amusement ride and attraction accidents and incidents. This administrative regulation establishes requirements for owner notification.

Section 1. Definition. "Damage" means structural, mechanical, or electrical failure of an amusement ride or attraction.

Section 2. Method of Notification and Information Required.

(1) Within twelve (12) hours of an occurrence described in KRS 247.233(1), the owner of an amusement ride or attraction involved in the occurrence shall notify the department by e-mail at agr.rides@ky.gov or <https://www.kyagr-apps.com/AgExternal/Security/Account/Login>.

(2) The notification shall contain the following information:

(a) The date and time of the incident or accident;

(b) The location of the incident or accident;

(c) A description of the incident, accident, or damage to the amusement ride or attraction;

- (d) The name, address, and telephone number of the owner or company for the amusement ride or attraction involved;
- (e) The name, address, and telephone each operator of the amusement ride or attraction involved;
- (f) The name, permit number, serial number, and manufacturer of the amusement ride or attraction involved;
- (g) The name, address, phone number, and age of the injured person, if known;
- (h) The nature and extent of the injury, if known;
- (i) A statement by the owner of whether the injury was caused by the amusement ride or attraction;
- (j) The name and location of the facility or person providing medical treatment other than first aid; and
- (k) The name, address, and telephone number of the person submitting the notification.

RYAN QUARLES, Commissioner of Agriculture

APPROVED BY AGENCY: June 14, 2023

FILED WITH LRC: June 14, 2023 at 3:55 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2023 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This regulation creates provisions for notice to the KDA in the event of an accident.
 - (b) The necessity of this administrative regulation: This filing makes clear the reporting provisions.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: The statutes charge the KDA with determination of reporting needs, and this filing satisfies this charge.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This filing makes clear for all entities what notice provisions are in a given circumstance.
- (2) If 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: The KDA has 532 active companies and 4232 active devices currently regulated.
- (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 permit holder will need to follow all statutes and regulations. This filing creates notice provisions. This replaces an existing regulation.
- (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No changes in costs are expected with this filing.
- (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The permit holder will be able to lawfully operate.
- (5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
 - (a) Initially: The KDA estimates \$530,000 total annually.
 - (b) On a continuing basis: The KDA estimates at least \$530,000 total annually.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of fees and the KDA general fund.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fees are established in this filing.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This filing does not establish fees.
- (9) TIERING: Is tiering applied? No, all entities are treated the same.

FISCAL NOTE

- (1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The KDA.
 - (2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 247.232-.236
 - (3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 KDA expects to receive \$110,000 annually at current participation levels.
 - (b) How 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 KDA expects to receive \$110,000 annually at current participation levels.
 - (c) How much will it cost to administer this program for the first year? The cost to administer this regulation is approximately \$530,000.
 - (d) How much will it cost to administer this program for subsequent years? The cost to administer for subsequent years is estimated to be at least \$530,000.
- Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
- Revenues (+/-):
 - Expenditures (+/-):
 - Other Explanation:
 - (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 for this filing.
 - (b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No cost

savings are anticipated for this filing.

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

No changes in costs are anticipated.

(d) How much will it cost the regulated entities for subsequent years? No changes in costs are anticipated.

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)] Fees will not exceed the major economic impact threshold.

GENERAL GOVERNMENT

Department of Agriculture

The Office for Consumer and Environmental Protection (New Administrative Regulation)

302 KAR 33:010. Grain dealers and grain warehouse operators.

RELATES TO: KRS 251.355, 251.375, 251.380, 251.470, 251.990

STATUTORY AUTHORITY: KRS 251.020

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation established the rules for administration and enforcement of the provisions of KRS Chapter 251.

Section 1. Licenses.

(1) Each person acting as a grain dealer or grain warehouse operator who operates more than one (1) facility shall have a separate license for each facility when each facility is operated as separate business establishment.

(2) All licenses shall be posted in a location at each business establishment that is easily viewable by customers and the public.

(3) All grain warehouse operators licensed under the United States Warehouse Act and operating in Kentucky shall also be required to hold a valid Kentucky Grain Warehouse Operator's license.

Section 2. License Fee Schedule. License fees for grain dealers and grain warehouse operators shall be based upon the number of bushels purchased by the dealer or warehouse operator during the previous year.

(1) The license fee schedule for grain dealers shall be:

(a) From 0 - 5,999 bushels, your fee will be: seventy-five (75) dollars.

(b) From 6,000 - 99,999 bushels: \$150.

(c) From 100,000 - 1,999,999 bushels: \$300.

(d) From 2,000,000 - 5,999,999 bushels: \$450.

(e) From 6,000,000 - 9,999,999 bushels: \$600.

(f) From 10,000,000 bushels or more: \$750.

(2) The license fee schedule for grain warehouse operators shall be:

(a) Under 2,000,000 bushels, your fee will be: \$300.

(b) From 2,000,000 - 5,999,999 bushels: \$450.

(c) From 6,000,000 - 9,999,999 bushels: \$600.

(d) 10,000,000 bushels or more: \$750.

Section 3. Forward Pricing Contracts. All forward pricing contracts used in Kentucky shall contain the following information which includes, at a minimum:

(1) Date of agreement;

(2) Agreement number;

(3) Description of the commodities under agreement;

(4) A statement that the seller freely sells and delivers to the buyer listed commodities on which the price is to be established at a later date and the seller pledges the commodities delivered pursuant to the agreement shall be free of any lien or encumbrance;

(5) A statement that the seller understands that ownership is being transferred to the buyer upon delivery, and that after delivery the seller becomes a creditor of the buyer for the fair market value of the delivered commodities until the price is established and settlement is completed, and if the buyer defaults on the obligation for settlement the seller may be held as an unsecured creditor of the buyer for the value of the commodities;

(6) A statement that upon demand of the seller, the buyer is obligated to pay the regular bid price upon the date of demand for the delivered commodities being priced by the seller less any service charge due to the buyer, and the buyer shall pay the same price as the buyer is bidding for like commodities being delivered for sale on that date by other sellers;

(7) A statement that for services rendered in connection with the agreement the seller shall be liable to the buyer for forward price charges printed on a scale ticket;

(8) A statement that each scale ticket marked for forward price becomes a part of the agreement between the seller and the buyer; and

(9) The name, contact information and signature of the seller and buyer.

Section 4. Temporary Storage Structures.

(1) To ease demand on approved warehouse space for a single crop year, the department may authorize other storage facilities as temporary storage structures by a Kentucky licensed grain warehouse.

(2) Grain stored in temporary storage structures may be used to cover storage obligations, forward pricing obligations, or otherwise be counted as an asset from the date of authorization until the following March 31. Grain held in temporary storage beginning April 1 shall not count as an asset during a KDA inspection.

(3) Authorization for temporary storage by the department may be granted if the following conditions are met:

(a) Requests for temporary storage shall be in writing and shall receive prior approval of the department before use.

(b) The identity of the grain placed in temporary storage shall be preserved by a unique or identifying mark that appears on the receipt.

(c) The structure to be used for temporary storage shall meet the following requirements:

1. Have a solid floor;

2. Have rigid self-supporting walls;

3. Provide adequate aeration;

4. Have acceptable covering; and

5. Be fully insured against loss of grain.

(d) The warehouse operator shall meet all financial and bonding requirements.

(e) The warehouse operator shall maintain a separate record of all grain stored in a temporary structure and show daily balance as part of the daily position record.

(f) The warehouse operator shall move the grain in temporary storage by sale or into their department licensed warehouse by:

1. March 31 following initial warehouse licensing for fund covered grain; or

2. Other dates, as established by the department.

(g) Grain stored in temporary storage can be considered part of commingled inventory to cover storage or forward pricing obligations.

Section 5. Emergency Storage. Authorization for emergency storage may be granted by the department if the following conditions are met:

(1) The warehouse operator provides written justification that a need for emergency storage exists for the current crop year in the local area including the exact location, kind of grain to be stored,

and the quantity of grain requested to be placed in emergency storage.

(2) The warehouse operator receives authorization from the Department before using emergency storage space.

(3) The warehouse operator moves the grain in emergency storage by sale or into their department licensed warehouse by:

(a) March 31 following initial warehouse licensing for fund covered grain; or

(b) other dates, as established by the department.

(4) Grain held in emergency storage shall not count as an asset for purposes of a KDA inspection.

Section 6. Producer Payment Responsibility.

(1) For purposes of Kentucky grain insurance fund coverage eligibility, in any grain transaction the entity that is responsible for payment to the producer shall be deemed to be a grain dealer, without regard to intermediaries or transporters.

(2) For purposes of Kentucky grain insurance fund coverage eligibility, ownership of grain shall be deemed to transfer the first time when that grain is delivered or weighed on a Department-approved scale.

(3) A claim arising from a transaction that did not conform to the requirements of this Section 6 shall not be eligible for Kentucky grain insurance fund coverage.

Section 7. Violation Review and Appeal. All appeals shall be conducted in accordance with KRS 13B.

Section 8. Incorporation by Reference.

(1) "Application for Grain Dealer/Warehouse License", April 2023, is incorporated by reference

(2) These materials may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Regulation and Inspection Division, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RYAN QUARLES, Commissioner

APPROVED BY AGENCY: June 14, 2023

FILED WITH LRC: June 14, 2023 at 3:55 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2023 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This filing creates the rules and process for grain buying by dealers or warehouses in Kentucky.

(b) The necessity of this administrative regulation:

This filing is necessary to create a uniform set of rules and processes for grain purchases.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This filing creates a uniform set rules and processes for grain transactions. This is critical for uniformity

and ease of use.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This filing assists with the statute by incorporating the federal NOP manual and the forms the KDA uses in the program.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects entities and persons seeking to purchase grain from producers. Approximately 85 Grain Dealers and 44 Grain Warehouses are currently regulated by the KDA.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All persons seeking to purchase grain from producers need to comply with the minimum standards laid out in this filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost depends on the activity the regulated entity purchase amount as described in the filing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will be able to purchase grain from producers lawfully.

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

(a) Initially: The KDA estimates \$304,000 total annually.

(b) On a continuing basis: The KDA estimates at least \$304,000 total annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of fees and the KDA general fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Fee establishments are required to attempt to cover part of the program costs.

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

(9) TIERING: Is tiering applied? No, all entities are treated the same. The only fee difference is based on volume purchased.

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 KDA.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 251 in its entirety.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 KDA expects to receive \$52,000 annually at current volumes purchased.

(b) How 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 KDA expects to receive \$52,000 annually at current volumes purchased as a projection.

(c) How much will it cost to administer this program for the first year? The cost to administer the Grain program is \$304,000

(d) How much will it cost to administer this program for subsequent years? The cost to administer the Grain program for subsequent years is estimated to be at least \$304,000.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Cost savings for regulated entities will remain at current levels.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Cost savings for regulated entities will remain at current levels is a reasonable expectation.

(c) How much will it cost the regulated entities for the first year? Costs will depend on the volume purchased in the prior year at application time.

(d) How much will it cost the regulated entities for subsequent years? Costs will depend on the volume purchased in the prior year at application time.

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)] Fees will not exceed the major economic impact threshold.

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
(New Administrative Regulation)**

505 KAR 1:240. Dietary services.

RELATES TO: KRS 15A.065, 15A.0652, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation establishes requirements for dietary services for group homes, youth development centers, and juvenile detention centers.

Section 1. Dietary Services. (1) For groups homes, youth development centers, and juvenile detention centers, a facility shall provide a dietician approved, nutritionally adequate menu with options to accommodate medical and religious requirements of individual juveniles.

(2) A juvenile shall be provided three meals each day, two (2)

of which shall be hot meals. The last meal of the day and breakfast shall be no more than fourteen (14) hours apart except during planned activities and holidays.

(3) A juvenile shall be provided three (3) snacks each day.

Section 2. Discipline. A meal, snack, or beverage shall not be withheld from a juvenile or altered for any disciplinary purpose.

VICKI REED, Commissioner

APPROVED BY AGENCY: May 15, 2023

FILED WITH LRC: May 15, 2023 at 3:59 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2023, 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 August 31, 2023. 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 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 administrative regulation establishes requirements for dietary services for group homes, youth development centers, and juvenile detention centers.

(b) The necessity of this administrative regulation: This administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 for administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes requirements for dietary services for groups homes, youth development centers, and juvenile detention centers.

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

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

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 632 DJJ employees, 456 juveniles and their families.

(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 will need to be informed of dietary guidelines and meal requirements. Juveniles and families will be informed of meal and snack provisions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that 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 administrative regulation will assist in the effective and orderly management of the department and its facilities.

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

(a) Initially: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of compliance is unknown, but it is not anticipated that 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: DJJ 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: An increase in funding is not anticipated.

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065, 15A.0652, 15A.160, 15A.305, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

(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.

(a) How much 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 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? This administrative regulation will not create any revenue.

(c) How much will it cost to administer this program for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost to administer this program for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full

year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation is not anticipated to generate any cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation is not anticipated to generate any cost savings.

(c) How much will it cost the regulated entities for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost the regulated entities for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current 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)] A major economic impact to the agency for the purchase of equipment and provision of training is not anticipated.

JUSTICE AND PUBLIC SAFETY CABINET

Department of Juvenile Justice

(New Administrative Regulation)

505 KAR 1:250. Drug screening and testing.

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 15A.210, 200.115, 605.150, 635.095, 635.100(7), 635.500, 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 15A.210, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation establishes procedures for the drug screening and testing of juveniles in the custody of the department.

Section 1. (1) Juveniles are subject to drug screening and testing at any time and shall be provided with documentation regarding the drug screening and testing process and the consequences of a positive drug test during intake and orientation. The consequences of a positive drug screen or test may include:

(a) Progressive discipline;

(b) Movement to a more restrictive level of care;

(c) Revocation of probation or supervised placement;

(d) Criminal charges filed by a law enforcement agency; or

(e) Sanctions by the court.

(2) A juvenile shall be informed, in writing, that failure or refusal to cooperate by providing a specimen, within two (2) hours of a request, is a major rule violation and may result in discipline. A juvenile may be kept on one-to-one supervision until they provide a specimen.

(3) Confidentiality. Facility staff and the laboratory involved in any aspect of the drug screening or testing program shall maintain strict standards of confidentiality, as required by law.

(4) If the juvenile admits to any drug usage prior to the drug

screen, the juvenile shall be asked to sign a statement acknowledging the use and that the screen may be positive. Prior to providing a written statement, the juvenile shall be informed that the written statement may be used in legal proceedings. This written statement shall not be coerced and shall be provided by the juvenile voluntarily. The specimen shall still be collected.

(5) Positive Screen Result. If the drug screen is positive, the juvenile shall be asked to sign a statement acknowledging that he or she has been using drugs and that the results of the drug screen are accurate. Prior to providing a written statement, the juvenile shall be informed that the written statement may be used in legal proceedings. This written statement shall not be coerced and shall be provided by the juvenile voluntarily.

(a) A confirmation test shall be conducted after a positive drug screen.

(b) Confirmation Test Results. Facility staff shall notify the juvenile of the confirmation test results within twenty-four (24) hours of receipt. A juvenile on furlough shall be notified of the results within one (1) business day. Except for positive screens or tests upon initial intake at a detention center, a penalty slip or disciplinary review notice shall be issued and the disciplinary review process in 505 KAR 1:XXX shall be followed.

(c) A juvenile testing positive for drugs shall be subject to progressive discipline.

VICKI REED, Commissioner

APPROVED BY AGENCY: May 15, 2023

FILED WITH LRC: May 15, 2023 at 3:59 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2023, 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 August 31, 2023. 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 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 administrative regulation establishes procedures for the drug screening and testing of juveniles in the custody of the department.

(b) The necessity of this administrative regulation: This administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 for administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to department staff and juveniles concerning the drug screening and testing of juveniles.

(2) If 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: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 632 DJJ employees, 348 juveniles and their families.

(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 facilities will need to follow the procedures for drug screening and testing of juveniles.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that 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 administrative regulation will assist in the effective and orderly management of the department and its facilities.

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

(a) Initially: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of compliance is unknown, but it is not anticipated that 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: DJJ 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: An increase in funding is not anticipated.

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065, 15A.0652, 15A.160, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

(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.

(a) How much 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 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? This administrative regulation will not create any revenue.

(c) How much will it cost to administer this program for the first

year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost to administer this program for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation is not anticipated to generate any cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation is not anticipated to generate any cost savings.

(c) How much will it cost the regulated entities for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost the regulated entities for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current 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)] A major economic impact to the agency is not anticipated.

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
(New Administrative Regulation)**

505 KAR 1:260. Education.

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 158.281, 200.080-200.120, Chapters 600-645, 605.110, 707 KAR 1:002, 707 KAR 1:320

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation establishes requirements to ensure that education is provided to juveniles in the department's custody.

Section 1. General. (1) Education services through the local school district shall be made available to juveniles upon admission at a DJJ facility during instructional days, except if there is substantial evidence to justify otherwise. Substantial evidence may include the juvenile having earned a diploma or GED or having an

IEP that requires something different. Educational services, necessary specialized equipment, and appropriate educational materials shall be provided at no cost to a juvenile up to the completion of high school or the General Education Development program.

(2) A juvenile enrolled in a community school shall be transported in accordance with the local school district's transportation policy.

Section 2. Assessments. (1) For a juvenile at a detention center, educational and vocational needs assessment shall be completed within five (5) instructional days of the juvenile's admission following the detention hearing. Previous results may be used if completed within the last 180 days.

(2) For a juvenile at a youth development center, educational and vocational assessments shall be completed within fourteen (14) days of the juvenile's admission if previous results are not available.

(3) A juvenile at a youth development center who has completed the fifth grade and enters a YDC without a previously administered vocational assessment shall be administered vocational assessments of aptitude, interest inventory, and learning and working styles. The results shall be used to:

(a) Determine a juvenile's vocational aptitude and interests, learning and working styles, and career clusters;

(b) Assist DJJ and school district staff as they integrate academic, vocational and work assignments, social skills, and treatment goals;

(c) Assist DJJ and school district staff as they communicate with the juvenile;

(d) Develop or review and revise if necessary, a juvenile's Individual Learning Plan and Transition Plan; and

(e) Provide each juvenile with career options.

Section 3. Educational Services at Juvenile Detention Centers. Educational services at a detention center shall be individualized to meet the assessment, educational, and developmental instruction needs of the juvenile, constructed on an open entry-open exit basis, and scheduled so that educational services do not compete with other facility programming. Provisions shall be made for academic counseling.

Section 4. Educational Services in YDCs and Group Homes. (1) Educational, technical, and treatment services shall be integrated and individualized to meet the assessment, educational, rehabilitative, and developmental instruction needs of each juvenile.

(2) Post-secondary course fees may require a juvenile to access grant money, individual juvenile accounts, parent contributions, or community sponsors.

(3) Juveniles shall receive credit for education that can be transferred to other schools.

(4) A juvenile's individual client record shall include academic and vocational information.

Section 5. Vocational and Technical Programming for YDCs. (1) A juvenile shall have the opportunity to enroll in pre-vocational and skill-based vocational training programs and explore vocational and technical opportunities based on the criteria for enrollment.

(2) Each local school district that operates within a YDC shall submit a monthly progress report to the DJJ Education Branch.

(3) Each technical program shall submit their vocational plan to the Education Branch at the beginning of each school year.

Section 6. Technical Education Safety. A juvenile may only use power driven machines and tools under the following circumstances:

(1) The juvenile has met the requirements for enrollment in a technical program;

(2) The juvenile has been enrolled in a technical training program;

(3) The juvenile is performing tasks designated by the Office of

Career and Technical Education for the training program in which the juvenile is enrolled;

(4) The certified technical teacher of the training program is supervising the juvenile;

(5) The juvenile has successfully completed the safety training and the safety test necessary to use the machines and tools or complete the task;

(6) The certified technical teacher shall document that the student has completed safety training; and

(7) The certified technical teacher of the training program and facility staff continuously monitors the emotional state and considers the mental stability of the juvenile prior to allowing the juvenile to use power driven machines and tools or perform a potentially hazardous task.

Section 7. Agreements with Local School Districts. (1) DJJ shall have an agreement with the school district servicing juvenile detention centers, youth development centers, and group homes that includes the following:

(a) Educational services shall be provided on an open entry-open exit basis;

(b) Education and treatment shall be an integral part of the juvenile's instructional plan;

(c) Education and treatment schedules shall be coordinated for the benefit of the juvenile;

(d) Work programs for juveniles shall not interfere with educational programming; and

(e) Disciplinary measures shall not interfere with educational programming, except if there is substantial evidence to justify otherwise.

(2) DJJ may provide training for school district and technical education staff for discipline of a juvenile in accordance with 505 KAR 1:400. Appropriate classroom management techniques to carry out the disciplinary rules shall be used.

Section 8. Individual Learning Plan, Individual Education Plan, and Individual Treatment Plan.

(1) The results of educational and vocational assessments shall be used as a basis for the initial development, and periodic review and revision, of an integrated ILP, Individual Education Plan if applicable, Individual Treatment Plan, and aftercare plan.

(2) DJJ and school district staff shall participate jointly in the development, review, and revision of a juvenile's ITP, ILP, IEP if applicable, and aftercare plan.

(3) The ILP and IEP when applicable, shall be integrated with the ITP and completed within fourteen (14) days of admission.

Section 9. Educational Disability. If a DJJ staff person suspects a juvenile may have an educational disability, the local school district's director of special education shall be notified as soon as practicable.

Section 10. Behavior and Discipline. (1) Discipline of juveniles at detention centers and YDCs shall be in accordance with 505 KAR 1:400. Discipline of group home juveniles during school activities shall be in accordance with local school board procedures and 505 KAR 1:400.

(2) A juvenile in a detention center or YDC who demonstrates behavior so disruptive that they are removed from the classroom shall not be readmitted to the classroom until they demonstrate improved behavior as determined by the teacher in collaboration with the staff.

(3) A juvenile in a group home who demonstrates behavior so disruptive that they are removed from the classroom may be remanded to the supervision of group home staff until readmitted to the classroom.

(4) If a juvenile is removed from the classroom, the juvenile shall be given assignments to work on individually.

Section 11. Educational and Vocational Records in Detention Centers and YDCs. (1) A person, including education personnel, authorized to obtain records pursuant to KRS Chapters 600 to 645, shall not obtain or attempt to obtain records to which they are not

entitled or for purposes for which they are not permitted to obtain them.

(2) A person, including education personnel, not authorized to obtain records pursuant to KRS Chapter 600 to 645, shall not obtain or attempt to obtain records that are made confidential pursuant to KRS Chapters 600 to 645, except upon proper motion to a court of competent jurisdiction.

(3) A person shall not destroy or attempt to destroy any record that is required to be kept unless the destruction is permitted by state law and is authorized by the court upon proper motion and good cause for the destruction being shown.

(4) Release of the juvenile's record, including behavior management, medical, dental, mental, or psychological reports, shall be prohibited unless presented as evidence in court in accordance with the law. A person, including school personnel, shall not disclose any report or information contained therein except as permitted by law or specific order of the court.

VICKI REED, Commissioner

APPROVED BY AGENCY: May 15, 2023

FILED WITH LRC: May 15, 2023 at 3:59 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2023, 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 August 31, 2023. 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 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 administrative regulation establishes requirements to ensure that education is provided to juveniles in the department's custody.

(b) The necessity of this administrative regulation: This administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 for administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to department staff and juveniles concerning staff duties and the procedures that govern operations of facilities with juveniles in the custody of the department.

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

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

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 632 DJJ employees, 348 juveniles, and their families.

(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: DJJ staff and juveniles will have to follow the requirements for education.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that 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 administrative regulation will assist in the effective and orderly management of the department and its facilities.

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

(a) Initially: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of compliance is unknown, but it is not anticipated that 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: DJJ 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: An increase in funding is not anticipated.

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065, 15A.0652, 15A.067, 15A.160, 15A.305, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

(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.

(a) How much 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 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? This administrative regulation will not create any revenue.

(c) How much will it cost to administer this program for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost to administer this program for subsequent years? An exact cost of compliance is unknown, but it

is not anticipated that this administrative regulation will increase current costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation is not anticipated to generate any cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation is not anticipated to generate any cost savings.

(c) How much will it cost the regulated entities for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost the regulated entities for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current 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)] A major economic impact to the agency is not anticipated.

JUSTICE AND PUBLIC SAFETY CABINET

Department of Juvenile Justice

(New Administrative Regulation)

505 KAR 1:270. Grievances.

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, 640.120

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.160, 15A.210, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation establishes the grievance process for juveniles in the custody of the department or attending a department day treatment program.

Section 1. General Information. (1) Staff shall explain the grievance process to a juvenile upon intake and post the process in the program and living areas. The handbook shall include instructions for the grievance process.

(2) A juvenile shall have the right to file a grievance without fear of retaliation.

(3) A juvenile may file a grievance regarding the following:

(a) Violation of federal or state law;

(b) Violation of department policies and procedures;

(c) Violation of department standard operating procedures;

(d) Claimed unsafe or unsanitary living conditions within the

facility or program; or

(e) The level of care provided within the facility or program.

(4) A juvenile shall not file a grievance on issues already grieved and decided.

(5) Non-grievable issues shall include:

(a) Court decisions;

(b) Disciplinary review decisions; and

(c) Legislative actions.

(6) An untimely filed grievance or one that concerns a non-grievable issue shall be returned to the juvenile with an explanation.

(7) A grievance that is missing information shall be returned to the juvenile explaining the information needed and the juvenile shall have five business days to return the grievance with the missing information. The time for a grievance response shall not begin until the grievance is returned with the missing information.

(8) Grievance forms shall be located in an area that is easily accessible to the juveniles and each facility shall provide one or more clearly marked lockboxes for the submission of a grievance. The lockbox shall be in an open area accessible to all juveniles.

(9) Each facility shall have a designated grievance officer. The grievance officer shall manage the lockboxes and oversee the grievance process.

(10) Deadline. A grievance shall be submitted by the juvenile within fourteen (14) days of the grieving incident occurrence. If the juvenile files a grievance after the deadline, the juvenile shall explain the reason for the delay on the grievance form when the grievance is filed for a delay determination by the Superintendent. The exception to this shall be if the incident falls under the classification of a Prison Rape Elimination Act occurrence. A PREA incident shall not have a time limit applied.

(11) Informal Resolution. Prior to filing a grievance, an effort shall be made to resolve the issue informally. The juvenile shall discuss the matter either with the staff person involved or the grievance officer. In determining whether to deny a grievance for failure to attempt informal resolution, the grievance officer shall consider the juvenile's and staff person's ability or barriers to informally resolve the grievance issue.

(12) Special Incident and PREA. A special incident shall not be handled informally or through the grievance process and shall be reported immediately to the facility Superintendent and Internal Investigation Branch. A PREA incident shall be reported through the hotline.

Section 2. Grievance Process.

(1) The grievance form shall be submitted in writing and signed and dated by the juvenile. The grievance shall include:

(a) Name of the juvenile filing the grievance;

(b) Name of facility;

(c) Details concerning the issue being grieved;

(d) Date of occurrence being grieved;

(e) Information concerning the effort to informally resolve the issue; and

(f) The desired resolution.

(2) If a juvenile is unable to adequately express the grievance in writing, the juvenile shall be allowed to present the grievance to the designated grievance officer verbally. The designated grievance officer shall make a written summary of the verbal grievance on a grievance form and have the juvenile sign and date it.

(3) A grievance or notification of intent to present a verbal grievance shall be deposited, by the juvenile, into a grievance lockbox.

(4) Grievances shall be retrieved from the lockbox within twenty-four (24) hours for juvenile detention centers and within two (2) business days for group homes, YDCs, and day treatment centers.

(5) The juvenile shall receive a written response with findings within three (3) business days. If a grievance is a medical issue, a facility nurse shall be involved in the resolution process at the facility level.

(6) A juvenile may withdraw a current or previously filed grievance at any time.

(7) The juvenile shall acknowledge all grievance findings, including withdrawals, with their signature. The grievance officer shall document any refusals to acknowledge the grievance findings on the grievance form.

(8) A copy of the grievance shall be placed in the juvenile's individual client record and a copy shall be given to the juvenile.

Section 3. Grievance Appeal Process. (1) If dissatisfied with the resolution, within forty-eight (48) hours, the juvenile may appeal the resolution of the grievance to the superintendent by indicating on the grievance form that the juvenile is appealing and depositing it into the lockbox. The juvenile shall provide all previous information submitted.

(2) Within three (3) business days of receiving the appealed grievance resolution, the superintendent shall meet with the designated grievance officer and the juvenile and may meet with the staff involved and other witnesses.

(3) The superintendent shall have up to five (5) business days to present a written final response to the juvenile.

Section 4. Grievance Process Deadlines. (1) If the grievance process deadlines are not met by the juvenile, the juvenile shall explain the reason for the delay in filing the grievance on the grievance form when the grievance is filed.

(2) The grievance officer shall forward the grievance delay explanation to the superintendent to determine if the grievance may proceed through the process. The superintendent shall decide this within twenty-four (24) hours of receipt and return the grievance to the grievance officer for further steps. The grievance officer shall deny the grievance with an explanation if the delay is not approved by the Superintendent or an explanation for the delay is not made by the juvenile.

(3) If the time frames are not met by the grievance officer, the grievance shall automatically be referred to the superintendent by the grievance officer. The superintendent shall follow the grievance appeal process deadlines in this section.

(4) If an essential party is unavailable, the time frames may be extended by the superintendent. The reason for the extension shall be noted on the grievance documentation.

(5) If more than ten (10) grievances are received by the grievance officer in any one (1) work week, the grievance officer may call a moratorium on the time limits for those grievances.

Section 5. Grievance Limits. If the superintendent determines that a juvenile has abused the grievance process by filing numerous frivolous or harassing grievances, the superintendent may limit the number of grievances which may be filed by the juvenile. A juvenile whose grievances have been limited shall be allowed to file no more than one (1) grievance every ten (10) business days. This limitation shall be placed into effect for no more than six (6) months at which time the juvenile may apply to the superintendent for removal of restricted status. Restrictions shall be removed or extended for periods not to exceed six (6) months at each application for release.

VICKI REED, Commissioner

APPROVED BY AGENCY: May 15, 2023

FILED WITH LRC: May 15, 2023 at 3:59 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2023, 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 August 31, 2023. 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 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 administrative regulation establishes the grievance process for juveniles in the custody of the department or attending a department day treatment program.

(b) The necessity of this administrative regulation: This administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 for administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to department staff and juveniles concerning staff duties and the procedures that govern operations of facilities with juveniles in the custody of the department.

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

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

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 670 DJJ employees, 504 juveniles and their families.

(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 will be trained in how to handle and respond to grievances. Juveniles and their families will be informed of the juvenile's right to file a grievance and the procedure for grievances.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that 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 administrative regulation will assist in the effective and orderly management of the department and its facilities.

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

(a) Initially: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of compliance is unknown, but it is not anticipated that 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: DJJ 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: An increase in funding is not anticipated.

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065, 15A.0652, 15A.160, 15A.305, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

(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.

(a) How much 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 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? This administrative regulation will not create any revenue.

(c) How much will it cost to administer this program for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost to administer this program for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation is not anticipated to generate any cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation is not anticipated to generate any cost savings.

(c) How much will it cost the regulated entities for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost the regulated entities for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current 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)] A major economic impact to the agency for the purchase of equipment and provision of training is not anticipated.

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
(New Administrative Regulation)**

505 KAR 1:280. Hair and grooming.

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 15A.210, 605.150, 635.095, 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 15A.210, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation establishes the requirements for hairstyles and grooming for juvenile detention centers, youth development centers, and group homes.

Section 1. Definitions.

(1) "Cornrows" means a hairstyle in which the hair is arranged in an intricate pattern of tight rows of braids close to the scalp. For people with tightly curled hair textures, this style is not removable by combing or brushing in a brief period of time.

(2) "Dreadlocks" means a hairstyle in which the hair is styled into ropelike sections formed by matting, braiding, or twisting that causes the strands of hair to lock together and due to the locking of the hair is not removable by combing or brushing in a brief period of time.

(3) "Religious exemption" means an approved justification to not be required to conform to a particular grooming standard based upon a sincerely held religious belief.

Section 2. Hairstyles and Grooming.

(1) Each juvenile shall have hair that is clean and styled in a way that does not obscure the face or make the juvenile hard to identify by staff.

(2) A juvenile may wear braids, cornrows, or dreadlocks that are neatly groomed.

(3) A juvenile shall not wear hairstyles that allow hair to fall lower than the eyebrows.

(4) Hairpins and bobby pins shall be prohibited.

(5) A juvenile shall not be allowed to cut or style designs into their hair or color hair after admission to the facility.

(6) Long hair shall be pulled up off the shoulders when on work detail or vocational programming, if safety or sanitation considerations require.

(7) Hairnets shall be provided for and worn by juveniles that work in food service.

(8) Wigs and hairpieces shall not be worn unless medically necessary, and if medically necessary, shall require approval from the Director of Medical Services or designee.

(9) Basic hair care services and culturally sensitive hair care maintenance shall be provided free of charge to the juvenile at least one (1) time a month. Basic hair care services shall include a haircut. Culturally sensitive hair care maintenance shall include basic wash and relaxation, if a licensed professional with expertise in culturally sensitive hair care is readily available. Relaxation shall require parental permission unless the juvenile has attained the age of eighteen (18).

(10) A juvenile shall be allowed to grow and maintain facial hair not to exceed a length of one-fourth (1/4) inch.

(11) A juvenile shall be issued culturally sensitive hair maintenance items or general hair care products on a daily basis, including combs and brushes.

Section 3. Licensed Professionals. (1) Only individuals licensed by the Commonwealth of Kentucky as barbers or cosmetologists shall provide hair care and grooming services to a juvenile. Each contracted barber or cosmetologist shall have a documented pre-service orientation training prior to conducting business at a DJJ residential facility, which shall include training on tool control, control of hazardous materials, and other basic procedures.

(2) Security. All tools, equipment, and chemicals used by the barber or cosmetologist shall be in the control of and maintained by the barber or cosmetologist when conducting business at a DJJ residential facility.

(3) Sanitation. The barber or cosmetologist shall adhere to the sanitation standards set for licensure. Equipment used for hair care services shall be sanitized after each use.

(4) Medical services.

(a) If the barber or cosmetologist observes an open lesion, cut, or wound on the scalp, neck, or facial area, staff shall be notified and the juvenile shall be referred for immediate medical services. If an open lesion, cut, or wound occurs during the barbering process, the supervising DJJ staff shall provide appropriate first aid and the juvenile shall not be provided further barber or cosmetology services until medically cleared.

(b) The facility nurse shall be notified and follow-up with the juvenile for medical consultation regarding the lesion, cut, or wound.

(c) A barber or cosmetologist shall not perform medical therapy on any skin condition.

Section 4. Photograph. If the appearance of a juvenile changes, including a significant change in hairstyle or length or the presence of facial hair, DJJ staff shall obtain an updated photograph of the juvenile to be scanned into the electronic record.

Section 5. Staff Prohibited Acts.

(1) DJJ staff shall not cut, shave, groom, or style the hair or facial hair of a juvenile.

(2) DJJ staff shall not mandate or order that the hair or facial hair of a juvenile be cut, except if:

(a) A medical condition exists and the action is approved by the Director of Medical Services;

(b) The cutting or styling of designs in the hair represent gang identification symbols or inappropriate language or depictions; or

(c) The hair presents a safety or security concern for the facility or its orderly operation and is approved by the Commissioner.

(3) A juvenile may be required by a juvenile's employer or instructor to restrain or cover hair in a manner that complies with health requirements for food service or other jobs or prevents hair entanglement in equipment.

Section 6. Search. (1) DJJ may search a juvenile's hair for contraband.

(2) Ordinary search procedures may include:

(a) Passing a hand-held metal detector over the inmate's hair and scalp to determine whether any metal objects are present;

(b) Directing a juvenile to turn the juvenile's head upside down and run their fingers vigorously through the hair including facial hair;

(c) Pressing the hair with the thumb and other fingers or squeezing the hair to detect foreign objects; and

(d) Using a body scanner to search for contraband.

(3) For youth development centers and youth detention centers, a juvenile's hair shall be searched:

(a) At intake; and

(b) After return from a trip outside the facility.

VICKI REED, Commissioner

APPROVED BY AGENCY: May 15, 2023

FILED WITH LRC: May 15, 2023 at 3:59 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2023, 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 August 31, 2023. 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 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 administrative regulation establishes the requirements for hairstyles and grooming.

(b) The necessity of this administrative regulation: This administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 for administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to department staff and juveniles concerning staff duties and the procedures that govern operations of facilities with juveniles in the custody of the department.

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

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

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 632 DJJ employees, 348 juveniles, and their families.

(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 will be instructed on proper hairstyle and grooming techniques as well as prohibited acts in regard to a juvenile's hair and grooming. Juveniles and their families will be informed of the juvenile's rights in regard to hair and grooming as well as restrictions on particular hairstyles.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that 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 administrative regulation will assist in the effective and orderly management of the department and its facilities.

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

(a) Initially: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of compliance is unknown, but it is not anticipated that 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: DJJ 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: An increase in funding is not anticipated.

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065, 15A.0652, 15A.160, 15A.305, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

(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.

(a) How much 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 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? This administrative regulation will not create any revenue.

(c) How much will it cost to administer this program for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost to administer this program for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation is not anticipated to generate any cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation is not anticipated to generate any cost savings.

(c) How much will it cost the regulated entities for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost the regulated entities for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current 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)] A major economic impact to the agency for the purchase of equipment and provision of training is not anticipated.

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
(New Administrative Regulation)**

505 KAR 1:290. Juvenile allowance and work detail.

RELATES TO: KRS 15A.065, 15A.0652, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.160, 200.115, 605.150, 635.095, 635.100(7), 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 15A.210, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation establishes requirements for allowances and work detail for juveniles in youth development centers and group homes.

Section 1. Work shall be considered a part of normal daily living activities. Nothing in this section shall be viewed as restricting either voluntary juvenile services to the community or staff involvement in juvenile fundraising activities.

Section 2. Juvenile Allowance. (1) A juvenile residing in a group home or youth development center shall receive \$3.00 per week as an allowance. The Commissioner may increase the allowance.

(2) The juvenile's allowance shall be paid from the program's annual operating budget into the juvenile's account maintained as part of the Youth Activity Fund.

Section 3. Work Detail. (1) A juvenile shall not be required to participate in uncompensated work assignments unless it is related to housekeeping, maintenance of the facility or its grounds, personal hygiene needs, part of an approved vocational or training program, or for restitution.

(2) A work detail shall not conflict with school attendance, unless approved by the educational staff. Work experience programs may be included in the juvenile's Individual Treatment Plan or Individual Learning Plan.

(3) Staff shall not enter into a work agreement with any juvenile under the care and custody of the department.

(4) A work agreement shall be executed if a juvenile will earn wages through participation in ongoing work release. This agreement shall include the:

(a) Employer's name;

(b) Salary paid;

(c) Work schedule assigned;

(d) Level of supervision; and

(e) Requirement that the employer abide by Kentucky child labor laws, if applicable.

(5) A Kentucky child labor law poster regarding hours of work permitted, for a juvenile fourteen (14) to seventeen (17) years of age, shall be posted in a conspicuous place in the facility.

(6) Medical documentation for a juvenile who participates in a work program, indicating that the juvenile is physically capable of performing the required work, shall be maintained in the juvenile's individual medical record.

VICKI REED, Commissioner

APPROVED BY AGENCY: May 15, 2023

FILED WITH LRC: May 15, 2023 at 3:59 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2023, 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 August 31, 2023. 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 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 administrative regulation establishes requirements for allowances and work detail for juveniles in the custody of the department.

(b) The necessity of this administrative regulation: This administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 for administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to department staff and juveniles concerning staff duties and the procedures that govern operations of facilities with juveniles in the custody of the department.

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

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

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 306 DJJ employees, 140 juveniles, and their families.

(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 will be instructed on juvenile allowances and work restrictions and will be trained on labor law requirements. Juveniles and their families will be informed about juvenile allowances as well as work opportunities and restrictions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that 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 administrative regulation will assist in the effective and orderly management of the department and its facilities.

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

(a) Initially: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of compliance is unknown, but it is not anticipated that 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: DJJ 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: An increase in funding is not anticipated.

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065, 15A.0652, 15A.160, 15A.305, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

(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.

(a) How much 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 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? This administrative regulation will not create any revenue.

(c) How much will it cost to administer this program for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost to administer this program for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation is not anticipated to generate any cost savings.

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Cost Savings (+/-):

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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)] A major economic impact to the agency for the purchase of equipment and provision of training is not anticipated.

JUSTICE AND PUBLIC SAFETY CABINET Department of Juvenile Justice (New Administrative Regulation)

505 KAR 1:300. Juvenile records and information.

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, 635.100(7), 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 15A.210, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation establishes requirements for juvenile records and information maintained by the department.

Section 1. Confidentiality. (1) Staff, consultants, contract personnel, interns, and volunteers shall keep juvenile records and information confidential pursuant to KRS 15A.0651, 610.320, and 610.340. Staff, consultants, contract personnel, interns, and volunteers shall not seek information beyond that needed to perform their responsibilities. All staff, consultants, contract personnel, interns, and volunteers shall sign a confidentiality/security form as a condition of employment or providing services.

(2) If another juvenile must be identified in a juvenile's case record for any reason, the juvenile's name shall be identified by first name and initial of the last name only.

(3) A juvenile or a juvenile's parent or guardian shall make a

written request for the juvenile's records to the offender information administrator.

(4) Others seeking to access juvenile records shall make a request in writing to the open records coordinator at the address on the department Web site at <https://djj.ky.gov/Pages/index.aspx> at the records request page.

Section 2. Juvenile Records. A record shall be kept for each juvenile committed to, in the custody of, or in placement with DJJ, which shall include the following:

- (1) Court documents, including authority to accept, release, or discharge;
- (2) Initial intake information;
- (3) Photograph;
- (4) Biographical data, including:
 - (a) A birth certificate, if available;
 - (b) The Social Security card, if available; and
 - (c) Government-issued identification, if available;
- (5) Juvenile personal property inventory;
- (6) Any grievances filed by or about the juvenile;
- (7) Assessment data, including case history or social history, if available;
- (8) Alternative to Secure Detention Program data, if applicable;
- (9) All incident reports involving the juvenile;
- (10) Any IIB report in which the juvenile was the alleged victim;
- (11) Behavior contracts;
- (12) Release summary for any release;
- (13) Records of any DJJ previous detainment;
- (14) Education records, including:
 - (a) Individual learning plan; and
 - (b) Education grades and credits;
- (15) Disciplinary records;
- (16) Transfer records;
- (17) If the juvenile is a youthful offender:
 - (a) Resident record card;
 - (b) Pre-sentence investigation;
- (18) Information regarding co-defendants, emergency protective orders, security threat group affiliation, and other known conflicts; and
- (19) Emergency medical information, such as the need for an EPEE Pen or steroid inhaler. All other medical information shall be in the medical record only.

Section 3. Medical Record. The juvenile's medical record shall be maintained separately.

Section 4. Transfer of Records. All records, including medical records, regarding the juvenile shall be available electronically or transferred to any facility to which the juvenile is transferred.

Section 5. Victim Information and Notification Everyday (VINE). For youthful offenders, the statutorily required information shall be entered into the VINE system so that victims are notified of the juvenile's location.

Section 6. Security Threat Groups. (1) The department shall identify juveniles active or associated with security threat groups and monitor the STGs for the purpose of maintaining institutional safety.

(2) All information regarding STGs shall be considered confidential and used only for official department or law enforcement purposes.

VICKI REED, Commissioner

APPROVED BY AGENCY: May 15, 2023

FILED WITH LRC: May 15, 2023 at 3:59 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2023, 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 August 31, 2023. 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 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 administrative regulation establishes requirements for juvenile records and information maintained by the department.
 - (b) The necessity of this administrative regulation: This administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 for administrative regulations.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to department staff and juveniles concerning procedures that govern operations of facilities with juveniles in the custody of the department.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.
 - (b) The necessity of the amendment to this administrative regulation: Not applicable
 - (c) How the amendment conforms to the content of the authorizing statutes: Not applicable
 - (d) How the amendment will assist in the effective administration of the statutes: Not applicable
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 863 DJJ employees, 348 juveniles, and their families.
- (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 will have to maintain confidentiality and follow procedures in the regulation.
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that 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 administrative regulation will assist in the effective and orderly management of the department and its facilities.
 - (5) Provide an estimate of how much it will cost to implement this administrative regulation:
 - (a) Initially: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.
 - (b) On a continuing basis: An exact cost of compliance is unknown, but it is not anticipated that 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: DJJ 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: An increase in funding is not anticipated.

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065, 15A.0652, 15A.160, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

(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.

(a) How much 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 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? This administrative regulation will not create any revenue.

(c) How much will it cost to administer this program for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost to administer this program for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation is not anticipated to generate any cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation is not anticipated to generate any cost savings.

(c) How much will it cost the regulated entities for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost the regulated entities for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current 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)] A major economic impact to the agency is not anticipated.

JUSTICE AND PUBLIC SAFETY CABINET Department of Juvenile Justice (New Administrative Regulation)

505 KAR 1:310. Leave, releases, and furloughs.

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 200.080-200.120, 439.600, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation establishes the requirements for leaves, releases, and furloughs for juveniles in the custody of the department.

Section 1. (1) Supervised off-grounds activities, day releases, furloughs, and approved leave for emergencies may be permitted to meet the treatment objectives of public offenders who are in custody. Authorized leave may be granted for youthful offenders consistent with the requirements of KRS 439.600.

(2) Eligibility for day releases and furloughs shall be consistent with the juvenile's track. At a minimum, the plan for day releases and furloughs consistent with the assigned Track shall be as follows:

(a) Misdemeanor track – one (1) day release and one (1) weekend furlough or up to seventy-two (72) hours.

(b) Felony track – one (1) day release and two (2) weekend furloughs or up to seventy-two (72) hours for each approved furlough.

(c) A juvenile sentenced as a YO shall not be eligible for day release or furlough without approval of the Commissioner.

(d) A juvenile probated as a YO but committed as a public offender shall be eligible for day release and furlough as stated in paragraphs (a) – (c) of this subsection.

(3) Off-grounds activities, day releases, and furloughs shall be used for public offenders, unless extenuating circumstances exist or the treatment team determines that the use of furloughs is contraindicated in assisting the juvenile in achieving treatment goals.

(4) A juvenile assigned to a Level 4 facility may be eligible for individual or group off-grounds activities, community activities, day releases, or furloughs with approval of the division director.

(5) The juvenile's treatment team shall recommend a day release or furlough only after the juvenile achieves progress level, excluding medical and emergency furloughs. Day passes may be issued for a juvenile obtaining progress level. A juvenile shall not be furlough eligible until the last week of progress level.

(6) Planning for day releases and furloughs shall be discussed during aftercare planning at the initial treatment planning meeting.

Section 2. Day Releases. (1) For day releases to the parent or caregiver the following shall occur:

(a) If the day release will include the juvenile visiting their home, the home evaluation shall be updated if the preliminary home evaluation was not conducted within the past six (6) months.

(b) The juvenile and parent or caregiver shall sign and receive a copy of the day release agreement incorporated by reference in this administrative regulation.

(c) The juvenile shall comply with the requirements in the day release agreement.

(d) The unescorted day release of a youthful offender shall require approval of the Commissioner or designee consistent with the provision of KRS 439.600.

(e) Declared juvenile sexual offenders shall only be approved for a day release, furlough, or emergency leave by the treatment team.

(2) For day releases for education or work release, the following shall occur:

(a) Program procedures may allow for a juvenile's participation in unescorted leave for employment or school programs.

(b) Approvals shall be requested for unescorted day releases for ongoing educational or career related activities on an individual basis.

(c) For declared juvenile sex offenders, a reassessment shall be completed.

(3) The conditions of the day release and documentation shall be given to the juvenile prior to the day release.

Section 3. Furloughs. (1) Prior to a juvenile being approved for furlough, the following shall occur:

(a) An updated home evaluation on the proposed furlough residence shall be completed;

(b) A furlough agreement shall be developed and approval obtained prior to a furlough;

(c) The juvenile and parent or caregiver shall have the furlough agreement explained to them. The juvenile and parent or caregiver shall sign and receive a copy of the furlough agreement and shall receive furlough documentation to accompany them during the furlough.

(d) If the juvenile is a youthful offender, a furlough request shall be submitted to the commissioner for final approval of the furlough.

(e) Furlough time for a declared juvenile sex offender, prior to program completion, shall be considered on a case-by-case basis and shall not exceed ten (10) days. A reassessment shall be completed for the declared juvenile sex offender prior to furlough, unless the furlough is less than thirty (30) days and the juvenile is expected to return to the facility after the furlough.

(2) While on furlough, the juvenile shall comply with the requirements of the furlough agreement and maintain daily contact with the facility as required in the furlough agreement.

(3) A furlough shall be planned in a manner that the juvenile's educational needs continue to be met by facility educational staff, including scheduling furloughs around weekends and holidays. Educational staff may also lengthen school days during the week to allow the juvenile to go on furlough on a Friday or Monday, provided all local educational requirements continue to be met.

(4) Furloughs to out-of-state locations shall be pursuant to the DJJ interstate compact policies incorporated by reference in 505 KAR 1:190.

Section 4. Medical Furloughs. (1) Medical furloughs for juveniles in a youth development center and group home shall be requested for approval.

(2) A medical furlough of a youthful offender may be authorized as provided in KRS 439.600.

(3) A medical furlough shall be governed by a written medical furlough agreement, which shall outline the length of the medical furlough and behavioral expectations of the juvenile during the medical furlough.

(4) The medical furlough agreement shall be signed by the juvenile and parent or caregiver before the juvenile is placed on medical furlough.

(5) A copy of the signed agreement shall be given to the juvenile and parent or caregiver supervising the juvenile during the medical furlough.

(6) Medical furloughs shall be granted for the duration specified by the juvenile's attending physician and approved by director of medical services.

Section 5. Emergency Furlough. (1) The circumstances of the emergency shall be verified before an emergency furlough request is submitted for approval.

(2) An emergency furlough shall not exceed more than seven (7) consecutive days without authorization from the commissioner or designee.

(3) The emergency furlough for a youthful offender shall only be approved as provided in KRS 439.600. Prior to the emergency furlough of a youthful offender, a written request shall be submitted to the superintendent requesting final approval of the emergency furlough.

(4) The juvenile and parent or caregiver shall have the emergency furlough agreement explained to them. The juvenile and parent or caregiver shall sign and receive a copy of the emergency furlough agreement and shall receive documentation to accompany them during the emergency furlough.

(5) During the emergency furlough period, contact shall be maintained with the juvenile and parent or caregiver.

(6) For the critical illness or death of an immediate family member, the juvenile may be allowed to go to the bedside under escort or alone, if statutes and circumstances allow. The procedures for emergency furlough shall be followed.

Section 6. Non-Compliance. If a juvenile is not compliant with the agreement during a day release, medical furlough, emergency furlough, or furlough, the following shall occur:

(1) The day release, medical furlough, emergency furlough, or furlough may be cancelled at any time due to the juvenile's non-compliance with the agreements or other significant factors related to the juvenile's status in the program.

(2) If a violation or circumstance occurs that would result in cancellation of the release or furlough, the following shall apply:

(a) If the juvenile is with the parent or caregiver, the parent or caregiver shall notify the JSW and youth counselor of the alleged violation or circumstance.

(b) A commissioner's warrant shall be used to facilitate the return of a juvenile to the designated facility when the juvenile is absent without leave while on furlough or day release.

Section 7. Leave from a Detention Center. (1) Escorted leaves for the purpose of obtaining necessary medical, dental, or mental health care shall require authorization from the Superintendent and shall not require an order of the court. All other escorted leaves shall require a written court order.

(2) Transport during an escorted leave shall be conducted in accordance with 505 KAR 1:XXX.

(3) Unescorted leave for any purpose shall occur only upon written order of the court.

Section 8. Release from Detention. (1) A juvenile released on medication shall be provided a minimum of three (3) days medication supply.

(2) A juvenile in an alternative to secure detention program shall not be required to be physically returned to the detention center to be processed for release upon receipt of a court order authorizing the juvenile's release.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Day Release", 2023; and

(b) "Furlough Agreement", 2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Juvenile Justice Web site at <https://djj.ky.gov/About%20DJJ/Pages/lrcfilings.aspx>.

VICKI REED, Commissioner

APPROVED BY AGENCY: May 15, 2023

FILED WITH LRC: May 15, 2023 at 3:59 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2023, 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 August 31, 2023. 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 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 administrative regulation establishes the requirements for leaves, releases, and furloughs for juveniles in the custody of the department.

(b) The necessity of this administrative regulation: This administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 for administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to department staff and juveniles concerning the procedures that govern operations of facilities with juveniles in the custody of the department.

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

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

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 863 DJJ employees, 348 juveniles, and their families.

(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 will be trained. Juveniles and caregivers will be informed about the day release and furlough requirements and must sign an agreement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that 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 administrative regulation will

assist in the effective and orderly management of the department and its facilities.

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

(a) Initially: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of compliance is unknown, but it is not anticipated that 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: DJJ 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: An increase in funding is not anticipated.

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065, 15A.0652, 15A.160, 15A.305, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

(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.

(a) How much 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 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? This administrative regulation will not create any revenue.

(c) How much will it cost to administer this program for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost to administer this program for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation is not anticipated to generate any cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation is not anticipated to generate any cost savings.

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

year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost the regulated entities for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current 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)] A major economic impact to the agency is not anticipated.

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
(New Administrative Regulation)**

505 KAR 1:320. Library services.

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 15A.210, 605.150, 635.095, 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 15A.210, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation establishes the requirement for library services for juveniles in the custody of the department.

Section 1. (1) Each Department of Juvenile Justice facility shall maintain a library or have organized participation in a local library service.

(2) Rules for the library or use of a local library service shall be:

(a) Posted;

(b) Placed in the handbook; or

(c) Otherwise made readily available to a juvenile.

Section 2. (1) Juveniles shall have access to reading materials in their assigned rooms; exceptions may be made for safety and security concerns.

(2) A juvenile shall take care of loaned library material and may be required to pay for the replacement of lost or damaged library.

VICKI REED, Commissioner

APPROVED BY AGENCY: May 15, 2023

FILED WITH LRC: May 15, 2023 at 3:59 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2023, 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 August 31, 2023. 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 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 administrative regulation establishes the requirement for library services for juveniles in the custody of the department.

(b) The necessity of this administrative regulation: This administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 for administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to department staff and juveniles concerning the procedures that govern operations of facilities with juveniles in the custody of the department.

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

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

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 632 DJJ employees, 348 juveniles and their families.

(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: Facilities staff will be informed of library requirements. Juveniles will be informed of library access options.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that 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 administrative regulation will assist in the effective and orderly management of the department and its facilities.

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

(a) Initially: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of compliance is unknown, but it is not anticipated that 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: DJJ 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: An

increase in funding is not anticipated.

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065, 15A.0652, 15A.160, 15A.305, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

(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.

(a) How much 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 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? This administrative regulation will not create any revenue.

(c) How much will it cost to administer this program for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost to administer this program for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation is not anticipated to generate any cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation is not anticipated to generate any cost savings.

(c) How much will it cost the regulated entities for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost the regulated entities for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current 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)] A major economic impact to the agency for the purchase of equipment and provision of training is not anticipated.

JUSTICE AND PUBLIC SAFETY CABINET

Department of Juvenile Justice

(New Administrative Regulation)

505 KAR 1:330. Personal property, dress, and clothing and bedding supply.

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 200.115, 605.150, 635.095, 635.100(7), 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation establishes personal property limitations and requirements for clothes and bedding for juvenile detention centers, youth development centers, and group homes.

Section 1. Personal Property (1) At intake, staff shall take inventory of personal belongings of the juvenile and the juvenile and staff shall sign the personal property inventory. The juvenile shall receive a copy of the inventory, the original shall be maintained in the individual client record, and a copy shall be maintained with the property.

(2) The facility shall provide the juvenile with written information, in the juvenile orientation handbook or otherwise, concerning the property that may remain in the juvenile's possession.

(a) A juvenile in a juvenile detention center may have the following:

1. Letters;
2. Court papers;
3. Photos with no nudity, revealing clothes, or gang signs;
4. Religious book, e.g. Bible, Quran;
5. School work or certificates.

(b) A juvenile in a youth development center or group home may have the following:

1. Letters;
2. Court papers;
3. Photos with no nudity, revealing clothes, or gang signs;
4. Religious book, e.g. Bible, Quran;
5. School work or certificates;
6. Treatment work;
7. Personal journals;
8. Watch; and
9. At least one set of personal clothes including shirt, pants, and shoes.

(3) The youth's parent or caregiver shall be advised of the personal items needed or permitted at the facility.

(4) Items and clothes that are inappropriate pursuant to the dress code in section 3(5) shall be stored or returned to the parent or caregiver.

(5) Property Disposal.

(a) After thirty (30) days, the juvenile's personal account shall be used to send property to the juvenile's parent or caregiver with delivery confirmation; or

(b) If the juvenile does not have sufficient funds to send the property, the facility shall incur the cost of delivery to the parent or caregiver with delivery confirmation.

(6) The inventory shall be updated and signed by the youth as items are added or removed.

(7) Inventoried items shall be signed for and returned to the juvenile, upon release from the custody of DJJ.

(8) Personal belongings of a juvenile absent without leave or on escape status shall be stored and retained by the program for thirty (30) days following the AWOL or escape incident.

Section 2. Lost or Stolen Property. (1) If a juvenile reports that personal property has been stolen or is lost and the report is substantiated, the juvenile shall be reimbursed.

(2) The maximum cost of replacement or repair shall be limited to the following:

- (a) Blouse or shirt twenty-five (25) dollars;
- (b) Skirt or trousers thirty (30) dollars;
- (c) Sweater twenty-five (25) dollars;
- (d) T-shirt ten (10) dollars;
- (e) Dress forty (40) dollars;
- (f) Coat or jacket seventy-five (75) dollars;
- (g) Shoes fifty (50) dollars;
- (h) Jewelry seventy-five (75) dollars;
- (i) Electronic devices and accessories \$100; and
- (j) Other items shall be evaluated on a per item basis.

(3) Approval of reimbursement for property that is in the possession of the juvenile shall be based upon the facts of each situation.

Section 3. Clothing. (1) DJJ shall ensure a juvenile is provided required clothing.

(2) A facility shall provide for the thorough cleaning and, if necessary, disinfecting of a juvenile's personal clothing before storage or before allowing the juvenile to keep and wear personal clothing.

(3) A facility shall allow for clean socks and underwear daily and a minimum of three (3) sets of clean clothing per week, and more often if necessary, depending on activities and weather conditions. Clothing shall be properly fitted and climatically suitable.

(4) Provision shall be made for the issuance of special and, if appropriate, protective clothing and equipment to a juvenile assigned to food service, a technical program, and a work experience program. If standard issue clothing presents a security risk, the juvenile shall be supplied with a security garment.

(5) Dress code.

(a) The dress code shall be contained in the juvenile orientation handbook and explained to each juvenile upon admission.

(b) A juvenile's clothing shall be proper in size and shall reflect a neat and well-groomed appearance.

(c) Clothing that displays profanity or sexual lewdness or conveys a message contrary to the treatment goals of the juvenile and facility shall be prohibited.

(d) Clothing that is identified with gangs, including the way it is worn, shall be prohibited. A facility may prohibit specific colors of clothing that are associated with a gang.

(e) State issued clothing shall be provided to a juvenile in a detention center.

(f) A juvenile in a YDC or group home may wear personal clothing, uniforms, or a combination thereof that is consistent with the requirements of the facility.

(g) A juvenile may be subject to discipline for failure to abide by the established dress code.

(6) Discharge. At discharge, an inventory of facility-issued clothing shall be made. The facility shall assess the basic clothing needs of the juvenile, and may allow the juvenile to retain state-issued clothing, as needed, with approval from the Superintendent.

Section 4. Bedding. A residential facility shall provide clean bed linens weekly and clean towels and wash cloths at least three (3) times per week.

VICKI REED, Commissioner

APPROVED BY AGENCY: May 15, 2023

FILED WITH LRC: May 15, 2023 at 3:59 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on August 22, 2023, 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 August 31, 2023. 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 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 administrative regulation establishes personal property limitations and requirements for clothes and bedding for juvenile detention centers, youth development centers, and group homes.

(b) The necessity of this administrative regulation: This administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 for administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to department staff and juveniles concerning procedures that govern operations of facilities with juveniles in the custody of the department.

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

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

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 632 DJJ employees, 348 juveniles, and their families.

(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 and juveniles will have to be aware of and follow the rules for personal property and clothes and bedding supply.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that 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 administrative regulation will assist in the effective and orderly management of the department

and its facilities.

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

(a) Initially: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of compliance is unknown, but it is not anticipated that 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: DJJ 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: An increase in funding is not anticipated.

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065, 15A.0652, 15A.160, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

(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.

(a) How much 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 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? This administrative regulation will not create any revenue.

(c) How much will it cost to administer this program for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost to administer this program for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation is not anticipated to generate any cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation is not anticipated to generate any cost savings.

(c) How much will it cost the regulated entities for the first year? An exact cost of compliance is unknown, but it is not

anticipated that this administrative regulation will increase current costs.

(d) How much will it cost the regulated entities for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current 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)] A major economic impact to the agency is not anticipated.

JUSTICE AND PUBLIC SAFETY CABINET Department of Juvenile Justice (New Administrative Regulation)

505 KAR 1:340. Recreation.

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.160, 15A.210, 605.150, 635.095, 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.160, 15A.210, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation establishes requirements for recreation in juvenile detention centers, youth development centers, and group homes.

Section 1. Juvenile Facilities. (1) Juveniles shall have one (1) hour of large muscle exercise and one (1) hour of planned exercise or constructive leisure time activity during school days with an additional one (1) hour of exercise or constructive leisure time activity each day on weekends and holidays.

(2) A variety of fixed and movable equipment for indoor and outdoor recreation shall be provided and may include the following: bats, balls, pool sticks, and horseshoes. Free weights shall be prohibited in detention centers.

(3) A juvenile shall not participate in water sports unless a certified lifeguard is present. An approved life jacket shall be worn for activities occurring on natural waters.

(4) A juvenile who is restricted from activity by medical staff shall not participate until medically released. If a juvenile is unable to participate in the planned recreational activity due to a medical limitation, another recreational activity shall be arranged for that juvenile in consultation with medical staff for a juvenile in a detention center, YDC, or group home, or with a parent or caregiver for youth at a day treatment program.

(5) Physical exercise shall not be used as punishment or discipline.

(6) Recreation shall be counted separately from a physical education class. One shall not be used to replace the other.

Section 2. Ratings. (1) A movie with a rating of restricted ("R") or higher shall be prohibited. A movie with a rating of parental guidance ("PG-13") shall require approval from the Superintendent or designee before being viewed.

(2) A television (TV) show with a rating of "Mature" or higher shall be prohibited. A TV show with a rating of parental guidance ("TV 14") shall require approval from the Superintendent or designee before being viewed.

(3) A video game with a rating of "Mature" or higher shall be prohibited. A video game with a rating of "Teen" shall require approval from the Superintendent or designee before being viewed.

(4) Music with lyrics that are profane, violent, sexually explicit, or gang-related shall be prohibited.

Section 3. Isolation, Protective Custody and Room Confinement. Special efforts shall be made to provide daily physical exercise for juveniles in isolation, protective custody, and room confinement. If a juvenile is placed in any of these during a scheduled recreation time, an alternative recreation activity that provides one (1) hour of large muscle activity shall be offered. The alternative recreation activity may be conducted in the room or area in which the juvenile is confined.

VICKI REED, Commissioner

APPROVED BY AGENCY: May 15, 2023

FILED WITH LRC: May 15, 2023 at 3:59 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2023, 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 August 31, 2023. 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 Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegsContact@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 recreation in juvenile detention centers, youth development centers, and group homes.

(b) The necessity of this administrative regulation is: This administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 for administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to department staff and juveniles concerning staff duties and the procedures that govern operations of facilities with juveniles in the custody of the department.

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

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

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

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

administrative regulation: This affects approximately 632 DJJ employees, 348 juveniles and their families.

(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 will be instructed on recreation requirements and restrictions. Juveniles and their families will be informed of recreation requirements and restrictions on entertainment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that 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 administrative regulation will assist in the effective and orderly management of the department and its facilities.

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

(a) Initially: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of compliance is unknown, but it is not anticipated that 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: DJJ 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: An increase in funding is not anticipated.

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065, 15A.0652, 15A.160, 15A.305, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

(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.

(a) How much 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 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? This administrative regulation will not create any revenue.

(c) How much will it cost to administer this program for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost to administer this program for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase

current costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation is not anticipated to generate any cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation is not anticipated to generate any cost savings.

(c) How much will it cost the regulated entities for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost the regulated entities for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current 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)] A major economic impact to the agency is not anticipated.

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
(New Administrative Regulation)**

505 KAR 1:350. Religious practice.

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation establishes religious practice procedures for juveniles in the custody of the department.

Section 1. Religious Practice. (1) A juvenile in custody may engage in the religious practices of their faith. A juvenile shall not be discriminated against based on their religious belief or practice.

(2) DJJ shall provide a juvenile the opportunity to participate in the practices of the juvenile's faith unless it is a threat to the safety of persons involved in the activity or the safety of the facility, the activity disrupts order in the facility or interferes with the treatment goals of the juvenile, or is not available.

(3) A juvenile's participation in religious activities shall be voluntary. A juvenile shall not be penalized for not participating in religious activities.

(4) A juvenile may designate any or no religious preference and indicate any religious accommodation needed upon intake to a

facility or any time while a juvenile resides at the facility. A juvenile shall not be harassed or ridiculed because of a religious designation or coerced toward a religious designation.

Section 2. Religious Designation. (1) Religious designation documentation shall be in writing, signed, and dated by the juvenile and DJJ staff receiving the designation.

(2) A juvenile shall submit a request to change their religious designation in writing.

(3) Once a religious designation has been made, another designation cannot be made for ninety (90) days.

Section 3. Religious Accommodation Request. (1) A juvenile may request a religious item or practice that is not available at the facility, including a religious dietary accommodation.

(2) A religious accommodation request shall be in writing, signed, and dated by the juvenile and DJJ staff receiving the accommodation request.

(3) The religious accommodation request shall explain the item or practice wanted.

(4) A decision regarding the accommodation request shall be made in writing within seven (7) business days from the date that it was received by DJJ staff.

(5) Appeal. A juvenile may appeal an accommodation request that is denied.

(a) The appeal shall be made in writing and given to the religious program coordinator or superintendent within five (5) days after the receipt of the denial.

(b) The facility religious coordinator or superintendent shall submit the appeal to the commissioner for review and disposition within three (3) business days from receipt from the juvenile.

(c) The commissioner shall review the appeal and make a written determination within five (5) days of receipt.

Section 4. Religious Items.

(1) A juvenile may possess items essential to the practice of their particular religious faith, if the item is allowed pursuant to Section 1(2) of this administrative regulation.

(2) A religious item shall be subject to review before entering the facility through the accommodation process.

(a) Once an item has been approved, if money is available in the juvenile's account, the juvenile may pay for the item;

(b) 1. If money is not available in the juvenile's account, the counselor shall consult the parent or caregiver to discuss payment for the item; or

2. The agency religious program coordinator shall consult community religious resources for a request for a religious item for an indigent juvenile.

Section 5. Religious Contacts and Visits.

(1) A juvenile may have a visit from a personal minister, pastor, or religious counselor at scheduled times and other times as approved by the Superintendent or designee.

(2) If a juvenile requests assistance in obtaining a religious leader, the agency religious program coordinator or the facility religious coordinator shall provide assistance to the juvenile in finding a religious leader.

(3) A juvenile may decline a visit with a personal minister, pastor, or religious counselor.

(4) A volunteer minister, pastor, or religious counselor, approved by the facility religious coordinator, shall have access to each area of the facility identified for religious programming. DJJ staff shall not serve as a volunteer minister, pastor, or religious counselor in the facility where the staff member works.

(5) A juvenile shall be allowed to have confidential communications with clergy.

(6) A volunteer minister, pastor, or religious counselor, approved by the facility religious coordinator, shall comply with KRS 15A.0651, 610.320, and 610.340 regarding the confidentiality of juvenile information.

VICKI REED, Commissioner

APPROVED BY AGENCY: May 15, 2023

FILED WITH LRC: May 15, 2023 at 3:59 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2023, 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 August 31, 2023. 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 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 administrative regulation establishes religious practice procedures for juveniles in the custody of the department.

(b) The necessity of this administrative regulation: This administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 for administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to department staff and juveniles concerning the procedures that govern religious practice in department facilities.

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

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

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 632 DJJ employees, 348 juveniles, and their families.

(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 facilities will need to comply with the procedures for religious practice and accommodation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that 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 administrative regulation will assist in the effective and orderly management of the department and its facilities.

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

(a) Initially: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of compliance is unknown, but it is not anticipated that 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: DJJ 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: An increase in funding is not anticipated.

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065, 15A.0652, 15A.160, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

(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.

(a) How much 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 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? This administrative regulation will not create any revenue.

(c) How much will it cost to administer this program for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost to administer this program for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation is not anticipated to generate any cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation is not anticipated to generate any cost savings.

(c) How much will it cost the regulated entities for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost the regulated entities for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current 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)] A major economic impact to the agency is not anticipated.

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
(New Administrative Regulation)**

505 KAR 1:360. Searches.

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, 635.100(7), 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.160, 15A.210, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation establishes search parameters.

Section 1. Routine Searches. (1) All juveniles and their possessions shall be subject to a routine search at any time. All searches shall be documented.

(2) A routine search of the person may include:

- (a) A pat down search;
- (b) Scanning with a metal wand;
- (c) Scanning with a metal detector; and
- (d) Whole body imaging.

(3) Staff shall provide the individual being searched with verbal instructions for the type of search being used.

(4) If possible, searches shall be conducted by same gender staff. Cross-gender searches shall only be conducted under exigent circumstances and shall be documented.

(5) Pat down search. Staff shall have the youth remove shoes, jackets, sweaters, gloves, and hats and staff shall inspect these items. Staff shall visually check the juvenile's hair, ears, nose, mouth, and under tongue.

(6) An incident report shall be completed if contraband is discovered.

Section 2. Strip Search. (1) Reasonable suspicion that a juvenile may be concealing contraband shall exist prior to the authorization of a strip search.

(2) Authorization shall be required by the superintendent and director of medical services prior to a strip search.

(3) An incident report shall be completed that includes the reasonable suspicion for the strip search.

Section 3. Body Cavity Searches. (1) Outside medical providers shall be the only individuals authorized to conduct a body cavity search. Reasonable suspicion that a juvenile may be

concealing contraband in a body cavity shall exist prior to the authorization of a body cavity search.

(2) Authorization shall be required by the superintendent and director of medical services prior to a body cavity search.

(3) An incident report shall be completed that includes the reasonable suspicion for the body cavity search and the identity of the outside medical provider who conducted the search.

Section 4. Visitors. (1) All visitors and their possessions shall be subject to search.

(2) If any visitor refuses to submit to a search, the visitor shall be denied entry.

(3) A visitor who leaves the visitation area shall be subject to search upon reentry.

Section 5. Contraband Confiscation and Chain of Custody.

(1) Each facility shall have a sign posted, in a visible location on the grounds of the facility, to advise all persons that it is a violation of Kentucky law to bring weapons, intoxicants, drugs, and other contraband onto the grounds or into the premises.

(2) If contraband is discovered at a facility, staff shall confiscate and place the contraband in a secure location. A chain of custody for the contraband shall be maintained.

Section 6. Whole Body Scanning. (1) Any juvenile, staff, or visitor that is pregnant, has a disability, requires reasonable accommodation, or is otherwise unable to be scanned shall be searched by other means when entering a facility.

(2) If possible and absent exigent circumstances, body scans of juveniles, staff, and visitors shall be conducted by an operator of the same sex.

(3) The images generated by the system may only be viewed by the operator unless the person scanned is believed to be in possession of contraband or the operator observes anything unusual about the scan, then the image may be viewed by the facility Superintendent, designated investigative staff as assigned by the Superintendent, and outside law enforcement agencies as appropriate. Something unusual may include a bulge in a location that would not normally have a bulge, an obvious metal object, or other variation from a normal scan that the operator would recognize as out of the ordinary from a clear scan from training.

(4) Staff and visitors who refuse to be scanned without a medical exemption provided in advance may be denied entry into an institution pending further investigation into the refusal.

(5) Juveniles who refuse to be scanned or attempt to manipulate or interrupt the scanning process and remain uncooperative may be issued a disciplinary report.

VICKI REED, Commissioner

APPROVED BY AGENCY: May 15, 2023

FILED WITH LRC: May 15, 2023 at 3:59 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2023, 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 August 31, 2023. 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 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 administrative regulation establishes search parameters.

(b) The necessity of this administrative regulation: This administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 for administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to department staff and juveniles concerning staff duties and the procedures that govern operations of facilities with juveniles in the custody of the department.

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

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

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 836 DJJ employees, 1163 juveniles, and their families.

(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 will be trained on proper search techniques. Juveniles and visitors will be informed that they will be subject to searches.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that 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 administrative regulation will assist in the effective and orderly management of the department and its facilities.

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

(a) Initially: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of compliance is unknown, but it is not anticipated that 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: DJJ 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: An increase in funding is not anticipated.

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065, 15A.0652, 15A.160, 15A.305, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

(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.

(a) How much 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 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? This administrative regulation will not create any revenue.

(c) How much will it cost to administer this program for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost to administer this program for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation is not anticipated to generate any cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation is not anticipated to generate any cost savings.

(c) How much will it cost the regulated entities for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost the regulated entities for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current 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)] A major economic impact to the agency is not anticipated.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
(New Administrative Regulation)

505 KAR 1:370. Treatment.

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, 635.100(7), 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation establishes requirements for the treatment of juveniles in the custody of the department.

Section 1. Treatment Plans. (1) An individual treatment plan and aftercare plan shall be developed, implemented, reviewed, and updated as needed for each juvenile committed to the department. The juvenile and parent or caregiver shall be allowed input into the treatment plan.

(2) The ITP shall be informed by the juvenile's risk and needs assessments.

(3) If present and identified as a need area on the needs assessment, primary criminogenic needs of attitudes, personality, and relationships shall be given priority in treatment plan goal and task development to reduce recidivism.

(4) If present and identified as a need area on the needs or risk assessments, secondary criminogenic needs such as low levels of achievement and satisfaction in school or at work, substance abuse, parenting or caregiver problems, and lack of involvement in prosocial leisure and recreation opportunities shall also be addressed in treatment plan goal and task development.

(5) The treatment plan may address responsibility issues.

(6) The treatment plan shall address court ordered treatment or if the youth is a declared juvenile sex offender.

(7) The aftercare plan shall address housing, counseling, and medical service needs and may include education and employment needs. The juvenile and parent or caregiver shall be allowed input into the aftercare plan.

Section 2. Treatment Team. (1) A juvenile in a youth development center or group home shall have a designated treatment team to review, update, and implement the juvenile's individual treatment plan.

(2) The treatment team shall be responsible for making all treatment decisions regarding a juvenile.

(3) The treatment team shall meet regularly with a juvenile.

(4) A juvenile shall participate in the treatment team meeting for major treatment decisions, including level movement, ITP, and placement planning. If appropriate, the treatment team shall go to the juvenile if the youth is unable to physically attend the meeting.

Section 3. Family Engagement. Each program shall maintain regular contact with the juvenile's parent or caregiver, including the initial individual treatment planning conference, family counseling sessions, and behavioral issues.

Section 4. Track and Level System. (1) A juvenile in a youth development center or group home shall be placed in a misdemeanor or felony track. Each track shall include a level system that addresses the juvenile's criminogenic needs associated with the risk to reoffend and be designed to provide a structured way for measuring progression toward treatment goals.

(2) A declared juvenile sexual offender shall receive treatment as outlined in 505 KAR 1:160 instead of through the track system.

Section 5. Misdemeanor or Felony Track. (1) Each track shall contain four (4) levels: Orientation Level, Learning Level, Progress Level, and Graduation Level. A juvenile may be required to complete a Refocus Phase or Behavioral Revocation Unit (BRU) Refocus Phase separate from the levels to focus on disruptive behavior or thinking that has caused a barrier for ITP progression.

(2) The misdemeanor track maximum out-of-home timeframe shall be 120 days and may be completed earlier dependent upon the juvenile's progression through the levels.

(3) The felony track maximum out-of-home timeframe shall be 240 days and may be completed earlier dependent upon the juvenile's progression through the levels. For Youthful Offenders, the length of time in the Progress Level shall depend on individual treatment needs, offense severity, and length of sentence.

(4) The maximum out-of-home timeframes for misdemeanor and Class D felony adjudications shall comply with KRS 15A.0652. Any time spent in an out-of-home placement shall count toward the maximum out-of-home time allowed by statute.

(5) If out-of-home placement beyond the maximum timeframes is determined to be necessary for completion of treatment, a request for extension shall be submitted to the Administrative Transfer Request Committee. The ATR Committee may approve an extension after review of the facts and circumstances warranting the need for continued out-of-home placement. The maximum time the out-of-home placement may be extended is the maximum originally allowed under KRS 15A.0652 (3)(d)(1) and (2) and the total period of commitment shall not exceed that permitted under KRS 635.060.

Section 6. Levels. (1) Movement through each level shall be determined by:

(a) Completion of level requirements;

(b) Behavioral compliance; and

(c) Completion of individual treatment plan tasks containing selected evidence-based practices to address criminogenic needs associated with the risk to reoffend, and the prosocial application of those tasks in daily life.

(2) Service delivery may be altered for a juvenile who has a cognitive, developmental, or physical disability to assist with successful progression through each level. A juvenile's progression through the levels shall not be extended due to a disability.

(3) A juvenile shall be assigned to the Orientation Level at admission. To advance to Learning Level, the juvenile shall successfully accomplish the following:

(a) Know and use staff and peer names;

(b) Participate in ITP meeting;

(c) Demonstrate knowledge of Resident Handbook material;

(d) Complete self-analysis assignment;

(e) Invite parent or guardian to ITP meeting;

(f) Complete Orientation Treatment Plan initial goals;

(g) Participate in developing educational and vocational goals;

(h) Become familiar with chores, living and employability skills, and educational and vocational programming;

(i) If assigned by counselor, begin to participate in treatment programming; and

(j) Begin discussing re-entry planning with treatment team.

(4) Learning Level. To advance to the Progress Level, a juvenile on Learning Level shall:

(a) Learn and work on ITP goals;

(b) Participate in educational and vocational requirements;

(c) Demonstrate working knowledge of program rules and expectations;

(d) Demonstrate appropriate social skills and problem-solving skills;

(e) Identify high risk thoughts, patterns of behavior, or negative peers and form positive relationships;

(f) Begin to demonstrate initiative, continue appropriate hygiene, and completion of chores;

(g) Complete treatment presentation to JSW and family;

(h) Participate in living and employability skills;

(i) Participate in discussions with treatment team about re-entry plan; and

(j) Begin discussion of the juvenile's actions that resulted in

residential placement.

(5) Progress Level.

(a) A juvenile on Progress Level may be eligible for day passes. A juvenile on Progress Level shall only be eligible for furlough during the last week of this level.

(b) The discharge planning conference shall be conducted and the aftercare plan shall be completed while on this level.

(c) To successfully complete Progress Level and move to Graduation Level, the juvenile shall:

1. Consistently practice socially acceptable behavior;
2. Exhibit increased initiative (doing things without being told);
3. Consistently exhibit helpful interactions with peers, staff, and family. Treat others with dignity and respect;
4. Be able to discuss the progress made on each of the juvenile's goals and action steps;
5. Be able to handle increased privileges and responsibilities;
6. Demonstrate consistent work in treatment programming and modeling skills learned in daily interactions;
7. Begin to strengthen positive community support systems and further develop the aftercare plan;
8. Complete treatment presentation/demonstration to JSW and family on new skills learned;
9. Continue to build educational and vocational skills and progress in these goal areas;
10. Demonstrate motivation and pro-social qualities in living and employability skills;
11. Begin discussion of successful living/relapse prevention plan with support system; and
12. Demonstrate responsible behavior.

(6) Graduation Level. To successfully complete the Graduation Level, the juvenile shall:

- (a) Demonstrate increased motivation to make good decisions;
- (b) Show positive, consistent behavior demonstrating role model qualities;
- (c) Show ability to discuss and plan for risks and strategies in ongoing conversations with support system;
- (d) Be able to discuss how community interaction and peer interaction will be a factor when going home;
- (e) Present successful living/relapse prevention plan to treatment team and support system;
- (f) Identify and discuss with family, needs for success and support;
- (g) Finalize or develop plan for continuing education or vocational learning;
- (h) Be on track to complete treatment programming assigned by counselor;
- (i) Show motivation and pro-social qualities when participating in living and employability skills;
- (j) Become familiar with and show ability to follow aftercare conditions and expectations;
- (k) If requested and approved by treatment team, successfully complete day pass; and
- (l) Finalize re-entry plan with treatment team.

(7) Refocus Phase and BRU Refocus Phase.

(a) A juvenile may be placed on Refocus Phase as a result of a penalty slip through the disciplinary review process or the treatment team may place a juvenile on Refocus Phase for disciplinary reasons aside from the juvenile not progressing in treatment.

1. On Refocus Phase, a juvenile shall not complete any treatment goals or action steps listed on the ITP.

2. To return to the previous level, a juvenile must complete treatment assignments and expectations as directed by the treatment team.

(b) A juvenile may be placed on BRU Refocus Phase as a result of a revocation.

1. A juvenile on BRU Refocus Phase shall participate in living and employability skills, appropriate social interactions with peers and staff, and educational and vocational learning.

2. A juvenile on BRU Refocus Phase shall follow the Orientation Level for responsibilities and privileges.

Section 7. Administrative Transfers.

(1) A juvenile being stepped up within the level of placement continuum due to a major rule violation shall be placed at the beginning of the Orientation Level at the receiving facility for stabilization and assessment. The juvenile's ITP shall be reviewed and updated, if necessary, to reflect the ATR.

(2) Except as otherwise provided, a juvenile being moved within the level of placement continuum shall be observed for evaluation and orientation to the facility. Within fourteen (14) days, the juvenile shall be returned to their previous facility level, unless otherwise determined by the treatment team.

(3) If the treatment team anticipates an extension of the out-of-home timeframes set in KRS 15A.0652, an ATR shall be requested twenty-one (21) days prior to the projected release date.

Section 8. Extension of Out-of-Home Placement Timeframes for YDC and Group Home. If an extension of out-of-home placement is requested, one of the following criteria shall be present and documented in the Administrative Transfer Request (ATR):

(1) Safety concerns for the community or juvenile exist based on current behavior;

(2) The pending outcome of a Department of Community Based Services (DCBS) investigation on the proposed placement residence, if no other community residence is viable;

(3) The pending outcome of an Interstate Compact referral for a proposed home evaluation or courtesy supervision, if no other community residence is available;

(4) Further out-of-home placement is necessary for completion of treatment;

(5) The juvenile requests extension due to being fearful to return to the community based on historical threats of violence or retaliation from community acquaintances;

(6) The juvenile requests extension for educational purposes or independent living arrangements not to exceed thirty (30) days; and

(7) The occurrence of a revocation of supervised placement as a result of the issuance of the decision letter from the Director of Community and Mental Health Services for detention or placement.

VICKI REED, Commissioner

APPROVED BY AGENCY: May 15, 2023

FILED WITH LRC: May 15, 2023 at 3:59 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2023, 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 August 31, 2023. 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 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 administrative regulation establishes requirements for the treatment of juveniles in the custody of the department.

(b) The necessity of this administrative regulation is: This administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.160, 605.150,

635.095, and 640.120 for administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to department staff and juveniles concerning staff duties and the procedures that govern the treatment of juveniles in the custody of the department.

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

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

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 632 DJJ employees, 348 juveniles, and their families.

(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 will be instructed on proper treatment requirements for juveniles. Juveniles and their families will be informed of the juvenile's treatment plan and expectations for the juvenile in treatment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that 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 administrative regulation will assist in the effective and orderly management of the department and its facilities.

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

(a) Initially: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of compliance is unknown, but it is not anticipated that 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: DJJ 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: An increase in funding is not anticipated.

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065, 15A.0652, 15A.160, 15A.305, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

(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.

(a) How much 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 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? This administrative regulation will not create any revenue.

(c) How much will it cost to administer this program for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost to administer this program for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation is not anticipated to generate any cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation is not anticipated to generate any cost savings.

(c) How much will it cost the regulated entities for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost the regulated entities for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current 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)] A major economic impact to the agency for the purchase of equipment and provision of training is not anticipated.

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 Juvenile Justice

JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
(New Administrative Regulation)

505 KAR 1:380. Mail, visiting, and telephone use.

RELATES TO: KRS 15A.065, 15A.0652, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation establishes requirements and procedures for mail, visitation, and telephone use for juveniles in juvenile detention centers, youth development centers, and group homes.

Section 1. Mail. (1) Notification that mail is subject to search and inspection shall be given to the juvenile and mailed to the juvenile's parent or caregiver within twenty-four (24) hours of admission.

(2) If a juvenile bears the mailing cost, there shall not be a limit on the volume of letters a juvenile may send or receive.

(3) A juvenile shall be allowed to mail five (5) first class letters each week, at no cost to the juvenile. The juvenile shall be allowed unlimited postage to contact their attorney. The postage allowance shall not be transferable to another juvenile.

(4) Mail received by the facility for the juvenile shall not be held more than twenty-four (24) hours, and packages shall not be held more than forty-eight (48) hours, excluding weekends and holidays. In an emergency situation in which normal facility procedure, policy, or activity is disrupted due to riot, escape, fire, natural disaster, employee action, or other serious incident, mail shall be delivered according to schedule when normal procedure and activity is restored.

(5) A first class letter or a package received for a juvenile who has been transferred or released shall be forwarded to the address designated by the juvenile or to the receiving facility. If there is no forwarding address, it shall be returned to the sender.

(6) A juvenile may send and receive a sealed, first class letter to and from court, counsel, and officials of DJJ or the Justice and Public Safety Cabinet, as well as those individuals on their approved mail list.

(a) Staff, in the presence of the juvenile, may inspect outgoing mail for contraband before it is sealed; and

(b) Mail received by the juvenile, from those listed in subsection 6, shall be opened only to inspect for contraband and only in the presence of the juvenile, unless waived in writing, marked as not privileged by the sender, or in circumstances that may indicate contamination.

(7) Mail shall be given to the Superintendent for a restriction determination, if the mail:

(a) Is marked with gang signs, symbols, or writing on the envelope;

(b) Is from a parent or other individual with a no contact order; or

(c) Was received from an incarcerated individual at another juvenile facility or correctional institution.

(8) Cash, checks, or money orders shall be removed from incoming mail and deposited in the juvenile's personal account with a receipt given to the juvenile.

(9) The treatment team shall assess the appropriateness of publications received by a juvenile on a case-by-case basis. Restrictions to access shall be directly related to the maintenance of facility order, treatment, or security.

(10) The superintendent or designee shall notify the juvenile in writing if a mail restriction has occurred or a mail item has been returned.

(11) A facility shall inform a juvenile at orientation of the hours and procedures for mail and procedures regarding the approved

senders list.

Section 2. Telephone Use. (1) Telephone services available for a juvenile shall be reasonably priced with rates and charges commensurate with those charged to the general public for like services.

(2) A juvenile with a hearing or speech disability shall be given access to a Telecommunications Device for the Deaf or comparable equipment.

(3) A facility shall notify a juvenile at orientation of the hours and procedures for telephone access and procedures regarding the approved callers list.

(4) A juvenile shall require approval to make a telephone call.

(5) Procedures for access to the telephone may relate to the progress of the juvenile, as demonstrated by advancement through the level system, except calls to and from the juvenile's legal representative or juvenile service worker.

(6) A juvenile shall be permitted phone contact with a parent or caregiver not less than once per week, unless the superintendent determines there is a threat to facility order, treatment, or security.

(7) A juvenile shall be permitted phone contact with their attorney as needed, but the timing of the contact may be impacted by operational issues.

(8) Calls may be monitored, except calls to and from the juvenile's legal representative.

(9) Any telephone messages shall be transmitted to a juvenile as soon as practicable, but within twenty-four (24) hours.

Section 3. In Person Visitation. (1) Visitation information shall be communicated to the juvenile and parent or caregiver within seventy-two (72) hours of admission.

(2) A juvenile shall have an approved visitors list.

(3) A secure program may retain the visitor's ID as the visitor signs in.

(4) A visitor of a juvenile shall be subject to search.

(5) Dress. A visitor shall be appropriately dressed. Lewd, revealing, transparent, gang affiliated, drug or alcohol affiliated, or offensive clothing, or any apparel that conveys a message contrary to treatment goals shall not be worn.

(6) Visitation Suspension. Visitation suspension shall be approved by the Superintendent or designee. Temporary suspension of visitation may occur for a juvenile or visitor due to a facility disruption or to support treatment goals as follows:

(a) For a visitor:

1. The visitor shall be notified of the suspension, in writing, within five (5) business days of the suspension determination; and

2. This notification shall include the conditions under which the suspension of visitation may be lifted.

(b) For a juvenile:

1. The juvenile shall be notified of the suspension.

2. This notice shall include the conditions under which the suspension of visitation may be lifted; and

3. Notification of the suspension shall be sent to the juvenile and parent or caregiver.

(c) To support treatment goals:

1. The temporary suspension shall require recommendation by the treatment team; and

2. Notification of the suspension shall be sent to the parent or caregiver.

(7) A visitor may be excluded from contact with a juvenile and the facility for the following reasons:

(a) Involvement in the juvenile's offense;

(b) Posing a threat to the safety of the juvenile or the security of the facility;

(c) Refusal to follow facility rules or procedures, including search;

(d) Appearing intoxicated or under the influence of drugs; or

(e) Facility documentation of a substantiated disruption during a previous visitation.

(8) Denial of visitation privileges shall be documented in writing. A copy of the denial and justification shall be sent to the excluded individual within five (5) business days of the denial determination.

(9) If available, teleconferencing or video conferencing may be coordinated by the juvenile's counselor with the juvenile service worker as a means for the parent or caregiver to contact the juvenile.

(10) Group visits shall comply with the following:

(a) A group wishing to visit the facility or a specific juvenile shall require advance approval from the superintendent;

(b) A group not routinely involved in the program or known to the facility superintendent or designee shall provide, in advance, a written request for the visit to the superintendent for approval;

(c) Group visits shall be limited to those groups who have a legitimate, beneficial purpose for the juvenile or facility; and

(d) Each individual within a group shall be subject to the same requirements established for individual visitation.

(11) An approved visitor shall have the responsibility for providing their own transportation for visits.

Section 4. Approved List. (1) A person that a juvenile may correspond with, telephone, or see for a visit shall be on the list approved by the superintendent or designee in consultation with the treatment team. The list shall include:

- (a) Immediate family members;
- (b) Guardian;
- (c) Caregiver; and
- (d) Attorney.

(2) Factors to be considered in approving a person for the list shall include:

- (a) Treatment progress or disruption; and
- (b) Safety or security of the juvenile, others, or the facility.

(3) Once approved, the superintendent and treatment team may exclude a person on the list based on a treatment or safety and security issue.

VICKI REED, Commissioner

APPROVED BY AGENCY: May 15, 2023

FILED WITH LRC: May 15, 2023 at 3:59 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2023, 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 August 31, 2023. 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 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 administrative regulation establishes requirements and procedures for mail, visitation, and telephone use for juveniles in juvenile detention centers, youth development centers, and group homes.

(b) The necessity of this administrative regulation: This administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 for administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate

administrative regulations for the proper administration of the cabinet and its programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to department staff and juveniles concerning procedures that govern operations of facilities with juveniles in the custody of the department.

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

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

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 632 DJJ employees, 348 juveniles, and their families.

(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: DJJ staff and juveniles will have to be aware of and comply with the rules concerning visits, mail, and telephone use.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that 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 administrative regulation will assist in the effective and orderly management of the department and its facilities.

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

(a) Initially: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of compliance is unknown, but it is not anticipated that 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: DJJ 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: An increase in funding is not anticipated.

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

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

FISCAL NOTE

(1) What 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 Juvenile Justice

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065, 15A.0652, 15A.160, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

(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.

(a) How much 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 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? This administrative regulation will not create any revenue.

(c) How much will it cost to administer this program for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost to administer this program for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation is not anticipated to generate any cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation is not anticipated to generate any cost savings.

(c) How much will it cost the regulated entities for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost the regulated entities for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current 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)] A major economic impact to the agency is not anticipated.

JUSTICE AND PUBLIC SAFETY CABINET

Department of Juvenile Justice (New Administrative Regulation)

505 KAR 1:390. Juvenile accounts and youth activity fund account.

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 15A.210, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate

administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation establishes requirements for the youth activity fund for department facilities and juvenile personal funds accounts for juvenile detention centers, youth development centers, and group homes.

Section 1. Juvenile Accounts for Juvenile Detention Centers, Youth Development Centers, and Group Homes.

(1) A juvenile may have a personal financial account. The personal account shall be maintained by the DJJ facility in an account at a local bank or other financial depository. A juvenile's individual funds received from allowance, work detail, work release, and money sent to a juvenile from outside the facility shall be deposited in the juvenile's account. If any interest is earned from the bank on the account, it shall become part of the Youth Activity Fund account and used for the benefit of the juveniles.

(2) A juvenile may request a statement of deposits and expenditures for the juvenile's individual account on a periodic basis.

(3) If a juvenile has sufficient funds in the juvenile's personal account to meet the minimum deposit requirements for the outside bank at which the youth activity fund account is maintained, the juvenile may open an interest-bearing personal account at the bank. The parent or guardian of the juvenile shall be responsible for opening and maintaining the bank account for the juvenile. A juvenile shall be given notice when his or her funds are sufficient to permit the juvenile to establish a personal account.

Section 2. Youth Activity Fund Account.

(1) Each facility operated by the department shall establish an account with a local bank or other financial depository. This account shall be called the youth activity fund account. The facility shall deposit all funds earned through work projects, sales of articles produced by juveniles, and private donations received by a facility into the youth activity fund account. The funds shall be used for the benefit of the juveniles in general.

(2) The facility shall maintain an adequate accounting system to ensure an accurate accounting of the funds deposited in the youth activities fund account.

Section 3. Trustees and Management.

(1) The superintendent shall serve as primary trustee of the facility's youth activity fund account. The facility's office coordinator shall be the secondary trustee. The superintendent may designate a third trustee. The final trustee shall be the non-governmental accounts contact person in the fiscal branch.

(2) All checks written from the activity fund account shall require signatures from two (2) trustees.

(3) Bank statements for each account shall be reconciled monthly.

(4) The facility shall maintain a ledger for the youth activity funds. The ledger shall record receipts, disbursements, and maintain a positive balance.

(5) All disbursements of the fund shall be covered by a sufficient balance in the account at the time of expending or obligating. All disbursements from the account shall be properly documented with a receipt or invoice and have two-party verification. Disbursements shall not be made in cash.

(6) The youth activity account fund shall not be used for disbursements for items or services for staff.

(7) If for any reason the facility or program discontinues operation or discontinues the youth activity fund, the assets of the fund shall be frozen with no new activity obligations. Any remaining balance shall be assigned to the youth activity fund at another facility or program.

VICKI REED, Commissioner

APPROVED BY AGENCY: May 15, 2023

FILED WITH LRC: May 15, 2023 at 3:59 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2023, 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 August 31, 2023. 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 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 administrative regulation establishes requirements for the youth activity fund for department facilities and juvenile personal funds accounts for juvenile detention centers, youth development centers, and group homes.

(b) The necessity of this administrative regulation: This administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 for administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to department staff and juveniles concerning staff duties and the procedures that govern operations of facilities with juveniles in the custody of the department.

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

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

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 632 DJJ employees, 348 juveniles, and their families.

(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 will be trained on youth activity fund and youth account procedures. Juveniles and their families will be informed of youth activity funds and youth account procedures.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that 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 administrative regulation will assist in the effective and orderly management of the department and its facilities.

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

(a) Initially: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of compliance is unknown, but it is not anticipated that 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: DJJ 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: An increase in funding is not anticipated.

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065, 15A.0652, 15A.160, 15A.305, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

(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.

(a) How much 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 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? This administrative regulation will not create any revenue.

(c) How much will it cost to administer this program for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost to administer this program for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation is not anticipated to generate any cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation is not anticipated to generate any cost savings.

(c) How much will it cost the regulated entities for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current

costs.

(d) How much will it cost the regulated entities for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current 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)] A major economic impact to the agency for the purchase of equipment and provision of training is not anticipated.

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
(New Administrative Regulation)**

505 KAR 1:400. Behavior management and progressive discipline.

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, 635.100(7), 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 15A.210, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation establishes the procedures for the use of incentives and progressive discipline for juveniles in department facilities.

Section 1. General Provisions. (1) A juvenile shall be made aware of the rules of the facility and the discipline imposed for violating these rules upon admission or as part of the orientation process. The rules and progressive discipline shall also be included in the handbook and conspicuously posted in the facility. Material shall either be written or interpreted to ensure understanding by the juvenile. Foreign language interpretation shall be provided for the juvenile if a language barrier exists.

(2) Discipline shall not:

- (a) Be used as a means to demonstrate a staff member's authority over a juvenile;
- (b) Be physically abusive, verbally abusive, or used to dehumanize or humiliate a juvenile;
- (c) Include the withholding of meals, snacks, educational access, required recreation; or
- (d) Include the use of restraints.

Section 2. Incentives. (1) A juvenile in the custody of the department who demonstrates compliance with the rules shall earn appropriate and available incentives. For incentives, staff shall set goals for juveniles to meet individually or as a group to qualify for an incentive. Eligible juveniles shall be informed of the goal required for the incentive by providing the information in writing, posting it, or being informed orally.

(2) Incentives may include:

- (a) Extra recreation time;
- (b) Special events participation;
- (c) Later bedtime;
- (d) Extra movie;
- (e) Additional television time;

- (f) Group recreation;
- (g) Additional telephone time;
- (h) Computer time;
- (i) Additional time on a favorite project;
- (j) Special visits with siblings and significant others;
- (k) Wearing personal clothing at a designated time, but not in detention centers;
- (l) Special snacks;
- (m) Ability to purchase items from the canteen; and
- (n) Other rewards that are suitable for the juvenile's level or facility.

(3) For youth development centers and group homes, incentives may include field trips or additional community contacts if appropriate. These incentives shall be consistent with the treatment level expectations in 505 KAR 1:370, and require recommendation from the treatment team, approval from the superintendent or designee, and facilities regional administrator.

Section 3. Minor Rule Violations. (1) Consequences for a minor rule violation shall be an immediate response to a juvenile's behavior and not require a disciplinary review. Discipline shall be reasonably time-limited.

(2) A minor rule violation shall include the following:

- (a) Minor destruction of property (including tampering with property);
 - (b) Bullying;
 - (c) Disorderly conduct;
 - (d) Horseplaying;
 - (e) Racism, prejudice, or sexist comment of any kind;
 - (f) Showing, writing, or demonstrating gang signs or affiliations in any fashion;
 - (g) Unauthorized trading, lending, or borrowing between juveniles;
 - (h) Tattooing oneself or others;
 - (i) Inappropriate sexual behavior (to include gestures, comments, or sexually acting out); and
 - (j) Other similarly minor violations of other rules posted at or provided to a juvenile at a facility.
- (3) Discipline for a minor rule violation may include:
- (a) Removal of a privilege;
 - (b) Loss of an activity;
 - (c) Early bedtime;
 - (d) Removal from the group;
 - (e) Placement on a behavior contract;
 - (f) Written treatment assignments; and
 - (g) Use of staff directed time out.

Section 4. Major Rule Violations for Detention, Youth Development Centers, and Group Homes. (1) If a juvenile engages in behavior that is a major rule violation, the juvenile shall be issued a penalty slip or disciplinary review notice within twenty-four (24) hours of the violation or once staff becomes aware of the violation.

(2) A major rule violation shall include the following:

- (a) Escape;
- (b) Attempted escape, plotting, or assisting in escape;
- (c) Physical or sexual assault;
- (d) Major property damage;
- (e) Possession of contraband;
- (f) Physical restraint;
- (g) Riot or inciting a riot;
- (h) Theft;
- (i) Unauthorized use of drugs, alcohol, intoxicants, or unauthorized use of medication;
- (j) Chronic program disruption; and
- (k) Commission of any crime under Kentucky law.

Section 5. Loss of Privileges. A juvenile may lose privileges by failing to comply with department and facility rules. Privileges may include: (1) Television time;

- (2) Group recreation;
- (3) Telephone time;
- (4) Computer time;

- (5) Gaming system time;
- (6) Music listening time;
- (7) Room time;
- (8) Group movie night;
- (9) Games; and
- (10) Other privileges suitable for the juvenile's level or facility.

Section 6. Time-out. If a juvenile is placed in a staff directed time out: (1) The time out shall not exceed sixty (60) minutes;

(2) The door shall not be shut;

(3) The juvenile shall participate in determining the end of the timeout; and

(4) Upon completion of the time out period, the juvenile shall discuss the situation with a staff member.

Section 7. Intensive Room Supervision. (1) Intensive room supervision shall only be used:

(a) For a juvenile who is showing or expressing a behavior that is a safety or security threat to the program;

(b) As a less restrictive attempt to avoid a locked isolation placement; or

(c) As a step-down from an isolation placement.

(2) Intensive room supervision shall not last longer than four (4) hours without authorization of the superintendent or administrative duty officer, and shall not exceed twenty-four (24) hours.

(3) Release criteria shall include whether the juvenile:

(a) Has regained control of their behavior; and

(b) Is no longer a threat to the security, safety, or orderly management of the facility.

(4) Intensive room supervision shall not apply to a group home or day treatment program.

Section 8. Room Restriction. (1) Room restriction shall not exceed twelve (12) hours, without authorization of the superintendent or ADO, and shall not exceed twenty-four (24) hours.

(2) Release criteria shall include whether the juvenile:

(a) Has regained control of their behavior;

(b) Is acting according to the terms of the plan for release; and

(c) Is no longer a threat to the security, safety, or orderly management of the facility.

(3) If the juvenile is under reasonable control and demonstrating behavior according to the terms of the plan for release, the juvenile shall be released from room restriction.

(4) In a juvenile detention center and Level 4 YDC, the door shall be shut, but not locked for room restriction. In a group home or other YDC, the door shall be open.

Section 9. Room Confinement. (1) Room confinement shall only be used in a Level 4 YDC or juvenile detention center for de-escalation and as a less restrictive placement for a juvenile who is showing or expressing a behavior that could warrant an isolation placement.

(2) It shall only be used during operational hours when a counselor is present.

(3) During room confinement, the door shall be shut and locked.

(4) Room confinement shall not last longer than four (4) hours and the juvenile shall not be placed on room confinement more than one (1) time in a twenty-four (24) hour period.

(5) At initial placement and within two (2) hours of placement on room confinement, a professional review shall be conducted by a juvenile counselor or the treatment director with the juvenile to counsel the juvenile and plan for release to the general population.

(6) When a juvenile is placed in room confinement, a plan for release of the juvenile from room confinement shall be made. The plan shall:

(a) State the behavioral expectations required for release from room confinement;

(b) Be explained to the juvenile by staff; and

(c) Be signed by the juvenile. If a juvenile refuses to sign, the plan shall be explained orally by a non-involved staff member and

witnessed by a third party.

(7) Release criteria shall include whether the juvenile:

(a) Has regained control of their behavior;

(b) Is acting according to the terms of the plan for release; and

(c) Is no longer a threat to the security, safety, or orderly management of the facility.

(8) If the juvenile is under reasonable control and demonstrating behavior according to the terms of the plan for release, the juvenile shall be released from room confinement.

(9) Room confinement shall only apply to a Level 4 youth development center and a juvenile detention center.

Section 10. Unit Restriction. (1) Unit restriction shall not exceed forty-eight (48) hours without a disciplinary review being conducted by the treatment team.

(2) The door shall not be locked.

(3) When a juvenile is placed in unit restriction, a plan for release of the juvenile from unit restriction shall be made. The plan shall:

(a) State the behavioral expectations required for release from unit restriction;

(b) Be explained to the juvenile by staff; and

(c) Be signed by the juvenile. If a juvenile refuses to sign, the plan shall be explained orally by a non-involved staff member and witnessed by a third party.

(4) Release criteria shall include whether the juvenile:

(a) Has regained control of their behavior;

(b) Is acting according to the terms of the plan for release; and

(c) Is no longer a threat to the security, safety, or orderly management of the facility.

(5) If the juvenile is under reasonable control and demonstrating behavior according to the terms of the plan for release, the juvenile shall be released from unit restriction.

Section 11. Unit Confinement. (1) Unit confinement shall not exceed five (5) days without a disciplinary review being conducted by the treatment team.

(2) The unit door shall be locked.

(3) If a juvenile is placed in unit confinement, a plan for release of the juvenile from unit confinement shall be made. The plan shall:

(a) State the behavioral expectations required for release from unit confinement;

(b) Be explained to the juvenile by staff; and

(c) Be signed by the juvenile. If a juvenile refuses to sign, the plan shall be explained orally by a non-involved staff member and witnessed by a third party.

(4) Release criteria shall include whether the juvenile:

(a) Has regained control of their behavior;

(b) Is acting according to the terms of the plan for release; and

(c) Is no longer a threat to the security, safety, or orderly management of the facility.

(5) If the juvenile is under reasonable control and demonstrating behavior according to the terms of the plan for release, the juvenile shall be released from unit confinement.

Section 12. Facility Restriction. (1) Facility restriction shall not exceed forty-eight (48) hours without a disciplinary review being conducted by the treatment team.

(2) If a juvenile is placed in facility restriction, a plan for release of the juvenile from facility restriction shall be made. The plan shall:

(a) State the behavioral expectations required for release from facility restriction;

(b) Be explained to the juvenile by staff; and

(c) Be signed by the juvenile. If a juvenile refuses to sign, the plan shall be explained orally by a non-involved staff member and witnessed by a third party.

(3) Release criteria shall include whether the juvenile:

(a) Has regained control of their behavior;

(b) Is acting according to the terms of the plan for release; and

(c) Is no longer a threat to the security, safety, or orderly management of the facility.

(4) If the juvenile is under reasonable control and demonstrating behavior according to the terms of the plan for

release, the juvenile shall be released from facility restriction.

Section 13. Isolation may only be used in juvenile detention centers and YDCs and shall require approval from the superintendent, shift supervisor, or other designee prior to use. If prior authorization cannot be obtained without jeopardizing safety and security, authorization shall be obtained immediately following the safe securing of the juvenile. Facilities shall follow proper time limits if using isolation as discipline as established in 505 KAR 1:410.

Section 14. Safety and Security Responses. Approved safety and security responses shall not be used as punishment and shall only be imposed if there is a threat to the overall safety and orderly operation of the facility. Approved safety and security responses may include room, unit or facility lockdown. The lockdown shall last until the security threat has passed. Unit lockdown and facility lockdown shall only apply to juvenile detention centers and Level 4 YDCs.

Section 15. Dangerous or Chronic Behavior. (1) For YDCs and group homes, the treatment team shall develop an individual program plan for a juvenile with assaultive behavior, chronic program disruption, or who presents a danger to themselves or others.

(2) The superintendent or shift supervisor may order immediate separation of a juvenile from the general population to allow for individualized attention for the behaviors in subsection (1) of this section. The treatment director shall be consulted immediately.

(3) Separation from the general population beyond twenty-four (24) hours shall require approval by the superintendent and the treatment director. The chief of mental health services and regional psychologist shall be consulted.

(4) This action shall be reviewed by the treatment team within seventy-two (72) hours.

(5) A juvenile shall be returned to their original status once the expectations stated in the IPP are met.

Section 16. Investigation. (1) An investigation shall be conducted for all alleged major rule violations that occur at a juvenile detention center, youth development center, or group home.

(2) A juvenile who violates a major rule at a detention center shall be given a copy of the disciplinary review notice and incident report. A juvenile who violates a major rule at a YDC or group home shall receive a penalty slip with the alleged violation and any immediate actions taken by staff to control and de-escalate the situation.

Section 17. Disciplinary Review. (1) A disciplinary review for a major rule violation shall be conducted in a:

(a) YDC and GH, by the treatment team within seven (7) business days after the penalty slip is issued; and

(b) Detention center, by the disciplinary review committee within twenty-four (24) to seventy-two (72) hours from the infraction.

(2) Postponement of the review may occur if there is justifiable cause.

(3) The juvenile shall be given written notice of the disciplinary review twenty-four (24) hours prior to the disciplinary review, unless the juvenile:

- (a) Signs a waiver to allow the review to take place sooner; or
- (b) Has waived the right to a review.

(4) The juvenile shall be present during the disciplinary review unless the juvenile's behavior justifies exclusion or the juvenile waived the right to be present. The juvenile may be excluded during testimony of any juvenile whose statement is given in confidence.

(5) A staff member may represent the juvenile at the disciplinary review if the juvenile requests the representation or if the juvenile is incapable of self-representation.

(6) The juvenile may make a statement, present evidence, or request witnesses on the juvenile's behalf.

(7) The disciplinary review determination shall be based solely on all of the information obtained during the disciplinary review

process including staff reports; the statements of the juvenile charged with the violation; evidence derived from witnesses, records, or other sources; and any impact that a disability may have on the juvenile's behavior.

(8) At the disciplinary review, the violation may be removed from the juvenile's file if it is determined that the violation did not occur. Discipline may be imposed against the juvenile in compliance with this administrative regulation, if it is determined that the violation occurred.

Section 18. Violation Decision. (1) The discipline to be imposed shall be determined during the disciplinary review.

(2) The treatment team or disciplinary review committee shall determine the appropriate progressive discipline to be imposed based on the frequency, length, and gravity of the violation, the juvenile's acceptance of responsibility and attempts to correct the behavior, current or previous behavioral health concerns, and other recent violations. Gravity shall be considered the most significant category as it relates to the protection of the juvenile, staff, and facility. Priority shall be given to facility and juvenile safety. All discipline shall be logical, proportional, timely, and consistent with the juvenile's individual treatment plan.

(3) Except for detention centers, a juvenile who does not complete required discipline shall advance through the level system in 505 KAR 1:370, but shall not be eligible for development or demonstration level privileges until discipline is complete.

(4) The treatment team or disciplinary review committee shall be responsible for making all treatment decisions regarding a juvenile in response to the major rule violation, changes in the ITP, or recommendation for transfer.

Section 19. Disciplinary Review Appeal. (1) A juvenile may appeal a disciplinary review decision within fourteen (14) days of receipt of the treatment team's or disciplinary review committee's decision. The appeal shall be in writing to the superintendent. The superintendent shall make a decision on the appeal within thirty (30) days of receipt.

(2) If the superintendent reverses the treatment team's or disciplinary review committee's decision and finds that the juvenile is not responsible for any or all of the alleged rule infractions, the assigned consequences shall be ordered lifted or adjusted accordingly. The incident or disciplinary report shall be removed from the juvenile's individual client record.

VICKI REED, Commissioner

APPROVED BY AGENCY: May 15, 2023

FILED WITH LRC: May 15, 2023 at 3:59 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2023, 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 August 31, 2023. 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 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 administrative regulation establishes the procedures for the use of incentives and

progressive discipline for juveniles in department facilities.

(b) The necessity of this administrative regulation: This administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 for administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to department staff and juveniles concerning the procedures that govern operations of facilities with juveniles in the custody of the department for behavior management and progressive discipline.

(2) If 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: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 632 DJJ employees, 348 juveniles, and their families.

(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 will be trained on proper search techniques. Juveniles and visitors will be informed that they will be subject to searches.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that 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 administrative regulation will assist in the effective and orderly management of the department and its facilities.

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

(a) Initially: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of compliance is unknown, but it is not anticipated that 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: DJJ 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: An increase in funding is not anticipated.

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065, 15A.0652, 15A.160, 15A.305, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645.

(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.

(a) How much 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 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? This administrative regulation will not create any revenue.

(c) How much will it cost to administer this program for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost to administer this program for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation is not anticipated to generate any cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation is not anticipated to generate any cost savings.

(c) How much will it cost the regulated entities for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost the regulated entities for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current 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)] A major economic impact to the agency is not anticipated.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
(New Administrative Regulation)

505 KAR 1:410. Isolation and protective custody.

RELATES TO: KRS 15A.065, 15A.0652, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, 635.100(7), 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.160, 15A.210, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation establishes procedures for isolation and protective custody in juvenile detention centers and youth development centers.

Section 1. Isolation. (1) Isolation shall only apply to juveniles in juvenile detention centers and youth development centers.

(2) A juvenile may be placed in isolation if the juvenile constitutes a threat to the safety or security of the facility, staff, or a juvenile.

(3) The following situations may constitute a threat to the safety or security of the facility, staff, or a juvenile and may result in an isolation placement:

- (a) Assault or attempted assault;
- (b) Sexual assault or attempted sexual assault;
- (c) Attempted escape or attempted absent without leave;
- (d) Escape;
- (e) Participating in a riot;
- (f) Planning a riot;
- (g) Possessing dangerous contraband; or
- (h) Causing extensive property damage.

(4) Authorization shall be obtained from the superintendent, youth services program supervisor, administrative duty officer, or shift supervisor prior to placing a juvenile into isolation. If prior authorization cannot be obtained without jeopardizing the safety and security of the facility, staff, or other juveniles, authorization shall be obtained immediately following the safe securing of the juvenile. An isolation placement shall not exceed four (4) hours without further action as stated in subsections (5) through (7) of this section.

(5) Isolation in a detention center.

(a) The superintendent may authorize a juvenile to remain in isolation beyond an initial four (4) hour period, not to exceed twenty-four (24) hours.

(b) An extension of an isolation placement beyond twenty-four (24) hours and up to thirty-six (36) hours shall require the approval of the division director. The division director shall consider whether the juvenile:

1. Has regained control of their behavior; and
2. Is no longer a threat to the security, safety, or orderly management of the facility.

(c) An extension of an isolation placement beyond thirty-six (36) hours and up to a maximum of forty-eight (48) hours shall require the approval of the division director and the chief of mental health services. For the extension decision, they shall consider:

1. Whether the juvenile has regained control of their behavior; and
2. Whether the juvenile is no longer a threat to the security, safety, or orderly management of the facility; and
3. The mental health issues of the juvenile.

(d) If a highly assaultive juvenile requires isolation for more than forty-eight (48) hours, an extension of an isolation placement beyond forty-eight (48) hours shall require the approval of the respective division director and the chief of mental health services. Any extension made shall be reviewed every twenty-four (24) hours and shall not exceed five (5) days. For the extension decision, they shall consider:

1. Whether the juvenile has regained control of their behavior; and

2. Whether the juvenile is no longer a threat to the security, safety, or orderly management of the facility; and

3. The mental health issues of the juvenile.

(6) Isolation in youth development centers and group homes.

(a) The superintendent may authorize a juvenile to remain in isolation beyond an initial four (4) hour period, not to exceed twenty-four (24) hours.

(b) An extension of an isolation placement beyond twenty-four (24) hours and up to thirty-six (36) hours shall require the approval of the facilities regional administrator. For the extension decision, the FRA shall consider whether the juvenile:

1. Has regained control of their behavior; and
2. Is no longer a threat to the security, safety, or orderly management of the facility.

3. An extension of an isolation placement beyond thirty-six (36) hours and up to a maximum of forty-eight (48) hours shall require the approval of the respective division director and the regional psychologist. For the extension decision, they shall consider:

a. Whether the juvenile has regained control of their behavior; and

b. Whether the juvenile is no longer a threat to the security, safety, or orderly management of the facility; and

c. The mental health issues of the juvenile.

(c) If a highly assaultive juvenile requires isolation for more than forty-eight (48) hours, an extension of an isolation placement beyond forty-eight (48) hours shall require the approval of the respective division director, the regional psychologist, and the chief of mental health services. Any extension made shall be reviewed every twenty-four (24) hours and shall not exceed five (5) days. For the extension decision, they shall consider:

1. Whether the juvenile has regained control of their behavior; and

2. Whether the juvenile is no longer a threat to the security, safety, or orderly management of the facility; and

3. The mental health issues of the juvenile.

(7) The nurse shift program supervisor or on call nurse designee shall be notified as soon as feasible to determine if there are contra-indications for the juvenile being placed in isolation.

(a) The facility nurse or health trained staff shall assess a juvenile placed in isolation as soon as it is safe to do so, as dictated by the director of medical services.

(b) Injuries, bruises, scratches, and other observations shall be noted by a minimum of two (2) staff. The nurse or designee shall document the date, time, and results of the assessment.

(8) Isolation may be used if requested by a juvenile and staff concur that the placement is in the best interest of the juvenile.

(9) An assessment of a juvenile in isolation shall not be required to occur within the deadlines established in subsections (5) – (7) of this section, if the deadline falls within the normal sleep time for the facility. A delayed assessment shall occur within two hours of the normal awake time for the facility.

(10) A juvenile in isolation shall be visited at least once a day by the superintendent or designee, medical or medically trained staff, and clinical or social work staff or designee. A juvenile may request a visit from clergy or other religious representative. All interactions with the juvenile during placement on isolation shall be documented.

(11) The regional psychologist or designee shall conduct interviews and assessments for disturbances in mental status, including, for example, depression; suicidal ideation; impaired thought processes, cognition or memory; agitation; paranoia; self-injurious behavior; evidence of bruises or other signs of trauma; and whether the juvenile's behavior has escalated beyond the staff's ability to control the juvenile by counseling or disciplinary measures.

(12) If a juvenile exhibits deterioration in mental status while in isolation, the regional psychologist shall be contacted to determine the most appropriate action based on the treatment needs of the juvenile.

(13) If a juvenile's problem behavior lasts twenty-four (24) hours and there appears to be a need for continued intervention, qualified health personnel shall assess the juvenile daily.

(14) The juvenile in isolation shall be afforded living conditions

and privileges approximating those available to the general population, including modified access to recreation and educational and treatment services taking into consideration the juvenile's safety needs.

(15) The juvenile shall be responsible for the daily cleaning of their living area in isolation.

(16) Release from isolation may occur based on the juvenile's behavior and state of mind.

Section 2. Isolation of Suicidal Juveniles. (1) Isolation shall not be used as a suicide precaution.

(2) A juvenile who is suicidal may only be placed in isolation if the juvenile presents an immediate assault risk to staff or other juveniles as evidenced by physical actions and other less restrictive interventions have failed or are not appropriate. All other suicide protocols shall be followed.

Section 3. Protective Custody. (1) A juvenile requiring protection from others may be placed in protective custody until alternative permanent housing is found within the facility or the juvenile is transferred to another facility.

(2) The superintendent or designee may order immediate placement in protective custody or isolation if it is necessary to protect the juvenile from harm. This action shall be reviewed every twenty-four hours of placement by the superintendent or designee. Separation from the general population beyond twenty-four (24) hours shall require approval by the superintendent and treatment director and shall consider any mental health issues of the juvenile. The chief of mental health services and regional psychologist shall be consulted. The action shall be reviewed by the treatment team within seventy-two (72) hours.

(3) The youth development center treatment team may develop a special management plan to assure the safety of and continuous services and programming for the juvenile.

VICKI REED, Commissioner

APPROVED BY AGENCY: May 15, 2023

FILED WITH LRC: May 15, 2023 at 3:59 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2023, 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 August 31, 2023. 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 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 administrative regulation establishes search parameters.

(b) The necessity of this administrative regulation: This administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 for administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of

the cabinet and its programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to department staff and juveniles concerning staff duties and the procedures that govern operations of facilities with juveniles in the custody of the department.

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

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

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 632 DJJ employees, 348 juveniles, and their families.

(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 will be trained on behavior management and progressive discipline. Juveniles will be informed of rules, incentives, and progressive discipline consequences.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that 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 administrative regulation will assist in the effective and orderly management of the department and its facilities.

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

(a) Initially: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of compliance is unknown, but it is not anticipated that 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: DJJ 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: An increase in funding is not anticipated.

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065, 15A.0652, 15A.160, 15A.305, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

(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.

(a) How much 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 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? This administrative regulation will not create any revenue.

(c) How much will it cost to administer this program for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost to administer this program for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation is not anticipated to generate any cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation is not anticipated to generate any cost savings.

(c) How much will it cost the regulated entities for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost the regulated entities for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current 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)] A major economic impact to the agency is not anticipated.

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
(New Administrative Regulation)**

505 KAR 1:420. Youthful offenders.

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 196.280, 197.045, 200.080-200.120, 439.265, 439.267, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.100(7), 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation establishes the

requirements for youthful offenders in the custody of the department.

Section 1. Sentence, Admission, Transfer. (1) A youthful offender sentenced to confinement by a circuit court shall serve the sentence in a DJJ operated facility, or approved or contracted facility, until one (1) of the events listed in KRS 640.030 occurs.

(2) A youthful offender convicted and awaiting classification placement shall:

(a) Be placed within sixty (60) days of sentencing;

(b) Have contact from a DJJ representative at least once per week while in a non-DJJ detention facility; and

(c) Be subject to DNA collection.

(3) A youthful offender shall be advised verbally and in writing, and sign an acknowledgement regarding the requirements of KRS 640.070 upon admission. A program shall provide foreign language interpretation of the materials for the juvenile if a language barrier exists.

(4) Placement of a youthful offender shall be in accordance with the Classification and Placement Manual incorporated by reference in 505 KAR 1:100.

(5) If a youthful offender is transferred to another facility, a new copy of the KRS 640.070 acknowledgement shall be signed by the youthful offender.

(6) DJJ shall not extend jurisdiction for a youthful offender beyond the age of eighteen (18) years and five (5) months except in special circumstances as described by KRS 640.075(1).

Section 2. Educational Good Time. (1) Sentence credits for education shall be awarded in accordance with KRS 197.045(1)(a)(2) for a youthful offender. A youthful offender shall receive ninety (90) days sentence credit for:

(a) Successful completion of the following education:

1. High school equivalency diploma;

2. High school diploma;

3. Two (2) or four (4) year degree from an accredited college or university;

4. Career or technical education program approved by the department; or

5. Two (2) or four (4) year degree from an accredited college or university online or by correspondence approved by the department;

(b) Successfully completing a drug treatment or other evidenced based program approved by the department; or

(c) Successfully completing a civics education program that requires passing a final exam.

(2) A list of department approved courses shall be available on the department Web site and posted at each facility in an area accessible to juveniles.

(3) Education sentence credit shall not be awarded for:

(a) An individual course;

(b) A certificate;

(c) Completion of a module or level within a larger trade or career or technical education program;

(d) Degree from a non-approved correspondence course provider;

(e) Degree from non-accredited entity; or

(f) Any program not approved by the department.

Section 3. Meritorious Good Time. (1) A youthful offender shall be considered for meritorious good time monthly to determine eligibility.

(2) If a youthful offender was absent without leave or was adjudicated or convicted of an additional felony that occurred while in a DJJ residential program, the six (6) month period following the return to the program from AWOL status or conviction of another felony shall not be considered for an award of meritorious good time.

(3) Once an award period has been reviewed, future awards shall not include any previously considered time period.

(4) Youthful offenders may be awarded meritorious good time for each full calendar month served. Meritorious good time may be awarded on jail or detention time or parole violation time. Partial

months shall not be considered for award amounts.

(5) Facility time shall be calculated in full month increments only and shall not be added to jail or detention credit or parole violation time.

Section 4. Victim Information and Notification Everyday. (1) A crime victim may register to be notified, if a youthful offender is absent without leave or has escaped, reaches sentence serve-out, or has a court-ordered release.

(2) Registering by the victim or members of the public in VINE shall be voluntary and confidential.

(3) A person shall be registered to receive electronic notification. The person may register:

(a) Electronically using the website, www.vinelink.com; or

(b) By calling the toll-free VINE line at 800-511-1670.

(4) A convicted youthful offender shall be added to the VINE database no later than the day of initial placement by the classification branch, and in the event of a change in custody status, the change shall be entered.

VICKI REED, Commissioner

APPROVED BY AGENCY: May 15, 2023

FILED WITH LRC: May 15, 2023 at 3:59 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2023, 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 August 31, 2023. 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 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 administrative regulation establishes the requirements for youthful offenders in the custody of the department.

(b) The necessity of this administrative regulation: This administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 for administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to department staff and youthful offenders concerning special requirements for youthful offenders and procedures for victim notification of release and procedures that govern operations of facilities with juveniles in the custody of the department.

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

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

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 538 DJJ employees, 54 youthful offenders and their families, and victims of youthful offenders.

(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: DJJ staff and juveniles will have to follow the requirements for youthful offenders and victims for notification of release.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that 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 administrative regulation will assist in the effective and orderly management of the department and its facilities.

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

(a) Initially: An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of compliance is unknown, but it is not anticipated that 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: DJJ 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: An increase in funding is not anticipated.

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065, 15A.0652, 15A.067, 15A.160, 15A.305, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645

(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.

(a) How much 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 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? This administrative regulation will not create any revenue.

(c) How much will it cost to administer this program for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost to administer this program for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation is not anticipated to generate any cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation is not anticipated to generate any cost savings.

(c) How much will it cost the regulated entities for the first year? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(d) How much will it cost the regulated entities for subsequent years? An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current 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)] A major economic impact to the agency is not anticipated.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Public Health Protection and Safety (New Administrative Regulation)

902 KAR 20:500. Medical reserve corps.

RELATES TO: KRS 39A.020, 39A.350, 39A.356, 39A.358, 342.640

STATUTORY AUTHORITY: KRS 39A.362, 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39A.362 authorizes the Cabinet for Health and Family Services to promulgate an administrative regulation to implement KRS 39A.350 to 39A.366. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. This administrative regulation establishes a volunteer health practitioner's eligibility for worker's compensation coverage during an emergency or declared emergency response.

Section 1. Definitions. (1) "Declared emergency" is defined by KRS 39A.020(7).

(2) "Department" means the Department for Public Health.

(3) "Emergency" is defined by KRS 39A.020(12).

(4) "Health services" is defined by KRS 39A.350(7).

(5) "Medical reserve corps" means the formally established network of volunteers, including volunteer health practitioners who are licensed to practice in Kentucky, registered with the department to provide emergency response services as directed by the department.

(6) "Voluntary health practitioner" is defined by KRS 39A.350(11).

Section 2. Applicability. The provisions of this administrative regulation shall only be applicable to volunteers who are active in the Health Emergency Listing of Professionals for Surge (K HELPS) system and who provide state-sanctioned emergency response, health, or veterinary services as directed by the department.

Section 3. Medical Reserve Corps Volunteer Registration. (1) All medical reserve corps volunteers shall:

(a) Register with the department through K HELPS at <https://www.chfs.ky.gov/agencies/dph/dphps/phpb/Pages/khelps.aspx>; and

(b) Have a criminal background check completed.

(2) Individuals seeking to register as a voluntary health practitioner shall:

(a) Submit proof of current licensure; and

(b) Be in good standing with the applicable licensure board.

(3) A voluntary health practitioner shall adhere to the scope of practice from the applicable licensure board.

(4) A non-medical volunteer shall not perform tasks outside their existing skill level or experience.

(5) A volunteer active within the K HELPS system who, in good faith and in the performance of his or her duties, acts in compliance with KRS 39A.350 to 39A.366 shall not be liable in damages to any person or government entity in tort or other civil action, including an action upon a medical, dental, chiropractic, optometric, or other health-related claim or veterinary claim, for injury, death, or loss to person or property that may arise from an act or omission of that volunteer unless such act or omission was the result of gross negligence or willful misconduct.

Section 4. Workers' Compensation Coverage for Medical Reserve Corps Volunteers. (1) In accordance with KRS 342.640(3), a volunteer who is active in the K HELPS system, an active member of the medical reserve corps, and in good standing with the department shall be considered an employee of the state for purposes of any medical workers' compensation benefits concerning any injury incurred while traveling to and from or providing emergency response or health services as directed by the department.

(2) A volunteer who is active in the K HELPS system, an active member of the medical reserve corps, and in good standing with the department shall be eligible for coverage under the department's worker's compensation coverage while providing emergency response services or health services in response to an emergency, declared emergency, or in disaster-related exercises, testing, or other training activities as directed by the department.

(3) Workers' compensation benefits for volunteers shall be limited to those medical benefits provided to state employees.

STEVEN J. STACK, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: May 18, 2023

FILED WITH LRC: June 7, 2023 at 2:35 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2023, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by August 14, 2023, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public.

Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2023. 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: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes a volunteer's eligibility for worker's compensation coverage during an emergency or declared emergency response.

(b) The necessity of this administrative regulation: This new administrative regulation is necessary to ensure volunteers, both health practitioners and non-medical volunteers, have adequate workers compensation coverage during emergency response activities as directed by the department.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 39A.362 authorizes the Cabinet for Health and Family Services to promulgate an administrative regulation to implement KRS 39A.350 to 39A.366.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new administrative regulation will help with the recruitment and retention of volunteers. Volunteers are a vital component of any emergency or declared emergency response.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This new administrative regulation will impact local health departments that have a Medical Reserve Corps unit. According to a national database there are twenty-nine (29) registered Medical Reserve Corps offices statewide in Kentucky with 1,014 registered volunteers.

(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 be aware of the workers' compensation insurance coverage for volunteers and ensure the proper filing of any required documentation related to any covered incident or accident. Individuals who want to become a part of the Medical Reserve Corps will need to be aware of the registration requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): At this time, there will be no costs to local health departments or the volunteers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Volunteer health practitioners will be covered under the department's workers' compensation insurance. This will assist with the recruitment and retention of volunteers who are able to respond when there is a declared emergency. This will strengthen the department's ability to respond in an emergency.

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

(a) Initially: It is estimated that providing workers compensation insurance coverage for volunteers will cost \$40,560 in the first year.

(b) On a continuing basis: Continued coverage will be approximately \$40,560 in subsequent years.

(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 implement this administrative regulation is federal funds received for the Medical Reserve Corps program.

(7) Provide an assessment of whether an 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 needed to implement this new 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 new administrative regulation.

(9) TIERING: Is tiering applied? No. Tiering is not applied as the requirements of this administrative regulation are applied equally to all effected entities.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Division of Public Health Protection and Safety in the Department for Public Health and local health departments who have a Medical Reserve Corps program.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 39A.362 and 194A.050(1).

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

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

(b) How 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? It is estimated to cost \$40,560 in the first year. The cost to provide workers' compensation insurance coverage is forty (40) dollars per volunteer. Currently, there are 1,014 registered volunteers (\$40X1,014=\$40,560).

(d) How much will it cost to administer this program for subsequent years? Ongoing cost will be \$40,560 per year. This cost could increase if additional volunteers register with the department. Ongoing cost will be \$40,560 per year. This cost could increase if additional volunteers register with the department.

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 any 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 any cost savings.

(c) How much will it cost the regulated entities for the first year? There will be no costs to the regulated entities in the first year.

(d) How much will it cost the regulated entities for subsequent years? There will be no costs to 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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(New Administrative Regulation)

902 KAR 100:185. Standards for protection against radiation from radioactive materials.

RELATES TO: KRS 194A.005(1), 211.180(1), 211.842-211.852, 211.990(4), 216B.015(22), 10 C.F.R. Part 20, 42 U.S.C. 2021(b)

STATUTORY AUTHORITY: KRS 194A.050(1), 211.844(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate, administrative regulations necessary to implement programs mandated by federal law, to qualify for the receipt of federal funds, and to cooperate with other state and federal agencies. KRS 211.844(1) requires cabinet to provide by administrative regulation for the licensing of the possession or use of sources of ionizing and the handling and disposal of radioactive waste. This administrative regulation establishes the standards for protection of the user and general public against radiation exposure, the standards for protection against ionizing radiation resulting from activities conducted by persons issued licenses or registrations by the cabinet, and the standards to control the receipt, possession, use, transfer, and disposal of sources of radiation by a person, or licensee. The total dose to an individual, including doses resulting from licensed and unlicensed radioactive material and radiation sources other than background radiation, shall not exceed the standards for protection against radiation established in this administrative regulation.

Section 1. Definitions. (1) "Agreement state" means a state with which the United States Nuclear Regulatory Commission (NRC) or the United States Atomic Energy Commission has entered into an effective agreement under subsection 274 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(b) et seq.).

(2) "Cabinet" is defined by KRS 194A.005(1).

(3) "Licensee" means a person who holds:

(a) A specific license issued by the cabinet pursuant to 902 KAR 100:040 and this administrative regulation;

(b) A specific license issued by the U.S. Nuclear Regulatory Commission or an agreement state; or

(c) A general license pursuant to 902 KAR 100:050 or equivalent regulations of the U.S. Nuclear Regulatory Commission or an agreement state.

(4) "Person" is defined by KRS 216B.015(22).

Section 2. Applicability. This administrative regulation shall apply to a licensee. The licensee shall comply with 10 C.F.R. Part 20 except as established in subsections (1) through (5) of this section.

(1) The licensee shall not be subject to:

(a) 10 C.F.R. 20.1003, Definition for licensee;

(b) 10 C.F.R. 20.1007;

(c) 10 C.F.R. 20.1009;

(d) 10 C.F.R. 20.1405;

(e) 10 C.F.R. 20.1406(b);

(f) 10 C.F.R. 20.1905(g);

(g) 10 C.F.R. 20.2203(c);

(h) 10 C.F.R. 20.2206(a)(1), (a)(3), (a)(4), and (a)(5);

(i) 10 C.F.R. 20.2401; and

(j) 10 C.F.R. 20.2402.

(2) Reference to the "Commission", "NRC", or an agreement state shall be deemed to be a reference to the "Cabinet for Health and Family Services, Department for Public Health, Radiation Health Branch", the NRC, or an agreement state.

(3) Reference to "NRC Form 313, Application for Material License" shall be deemed to be a reference to "Application for Radioactive Material License" RPS-7, incorporated by reference in 902 KAR 100:040.

(4) Reference to the violations under 10 C.F.R. 20.2401 shall be deemed to be a reference to 902 KAR 100:170.

(5) Reference to the criminal penalties under 10 C.F.R. 20.2402 shall be deemed to be a reference to KRS 211.990.

Section 3. Annual Report of Waste Generated. (1) A licensee issued a specific license, pursuant to 902 KAR 100:040, shall file an Annual Low Level Radioactive Waste (LLRW) Report with the cabinet.

(2) The report shall be filed if the licensee was, or was not, a waste generator during the reporting period, except for a licensee that is authorized for only sealed radioactive sources and has leak test results indicating no leakage or damaged sources.

(3) The report shall:

(a) Contain information regarding low-level radioactive waste associated with activities authorized by the license for a period of one (1) calendar year;

(b) Contain the types and amounts of generated waste, and estimates of future wastes to be generated; and

(c) Be filed no later than January 15 of the following year.

Section 4. Reporting of Events and Notifications. The reporting of events and notifications required by 10 C.F.R. Part 20 shall be directed to the manager, Radiation Health Branch, at:

(1) 275 East Main Street, Mailstop HS1-C-A, Frankfort, Kentucky 40621;

(2) (502) 564-1492: Facsimile;

(3) (502) 564-3700: Telephone, Monday through Friday from 8 a.m. to 4:30 p.m.; or

(4) (800) 255-2587: Telephone, for hours outside of those in subsection (3) of this section.

Section 5. Incorporation by Reference. (1) "Annual Low Level Radioactive Waste (LLRW) Report", 05/2023, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copy right law, at Department for Public Health, Radiation Health Branch, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material is available on the agency's Web site at <https://www.chfs.ky.gov/agencies/dph/dphps/rhb/Documents/LLRWReportForm1.pdf>.

STEVEN J. STACK, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: May 26, 2023

FILED WITH LRC: June 7, 2023 at 2:35 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall, if requested, be held on August 21, 2023, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by August 14, 2023, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2023. 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

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes the receipt, possession, use, transfer, and disposal of licensed material by any licensee in such a manner that the total dose to an individual, including doses resulting from licensed and unlicensed radioactive material and from radiation sources other than background radiation, does not exceed the standards for protection against radiation.

(b) The necessity of this administrative regulation: This new administrative regulation is necessary to protect radiation workers and the public from exposure to excessive radiation and sets safety limits.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.844 requires the cabinet to provide by administrative regulation the requirements for the licensing, use, and disposal of radioactive materials.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new administrative regulation ensures all those engaged in the licensing, use, transfer, and disposal of radioactive source material meet the regulatory 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: 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: There are approximately 350 licenses issued for certain uses of radioactive material and specific devices containing radioactive material.

(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 will be needed by

the licensee to comply with this new 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 is a minimal cost to the cabinet associated with updating references.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Adopting 10 C.F.R. Part 20 by reference will reduce the redundancy between state and federal requirements. This will reduce the time needed to research applicable regulations and make it easier for the licensee to review existing guidance documents.

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

(a) Initially: This new administrative regulation will not impact cost to the agency.

(b) On a continuing basis: There will be no ongoing costs to the agency to implement this new administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Radiation Health Branch is funded through a mix of state general fund dollars and the various fees associated with issuing licenses.

(7) Provide an assessment of whether an 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 needed 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 associated with this administrative regulation.

(9) TIERING: Is tiering applied? No. Tiering is not applied. The requirements of this administrative regulation are applied equally to all licensees.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Radiation Health Branch within the Department for Public Health 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 and 211.844.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 regulation does not generate revenue.

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

(c) How much will it cost to administer this program for the first year? This new administrative regulation does not impact cost to the agency.

(d) How much will it cost to administer this program for subsequent years? This new administrative regulation does not impact cost to the agency.

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 may result in minimal cost savings for the regulated entities. This new administrative regulation reduces the administrative burden of having to research and follow duplicative state and federal requirements.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation may result in minimal cost savings for the regulated entities. This new administrative regulation reduces the administrative burden of having to research and follow duplicative state and federal requirements.

(c) How much will it cost the regulated entities for the first year? This new administrative regulation will have no impact on cost for the regulated entities.

(d) How much will it cost the regulated entities for subsequent years? This new administrative regulation will have no impact on cost for 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 (+/-):

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. Atomic Energy Act of 1954, 42 U.S.C. 2021, as amended, and 10 C.F.R. Part 20.

(2) State compliance standards. As an agreement state with the Nuclear Regulatory Commission the state is required to have a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the state covered by the proposed agreement. The state is required to adopt compliance standards for the protection of the public health, safety, and the environment from hazards associated with such material which are equivalent, to the extent practicable, or more stringent than, standards adopted and enforced by the Commission for the same purpose.

(3) Minimum or uniform standards contained in the federal mandate. In accordance with 42 U.S.C. 2021(g), the commission is authorized and directed to cooperate with the states in the formulation of standards for protection against hazards of radiation to assure that state and commission programs for protection against hazards of radiation will be coordinated and compatible. Pursuant to 42 U.S.C. 2021(a)(3) the purpose of this standard is to promote orderly regulatory pattern between the commission and state governments with respect to nuclear development and use and regulation of byproduct, source, and special nuclear materials.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable as there are no stricter standards, or additional or different responsibilities or requirements.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Public Health Protection and Safety (New Administrative Regulation)

902 KAR 100:195. Licensing of special nuclear material.

RELATES TO: KRS 194A.005(1), 211.180(1), 211.842-211.852, 211.990(4), 10 C.F.R. Part 70, 42 U.S.C. 2021(b)

STATUTORY AUTHORITY: KRS 194A.050(1), 211.844(1)

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 operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.844(1) requires the Cabinet for Health and Family Services to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation establishes procedures, criteria, terms, and conditions upon which the cabinet issues licenses for special nuclear material.

Section 1. Definitions. (1) "Agreement state" means a state that the United States Nuclear Regulatory Commission (NRC) or the United States Atomic Energy Commission has entered into an effective agreement under subsection 274 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(b) et seq.).

(2) "Cabinet" is defined by KRS 194A.005(1).

(3) "Licensee" means a person who holds:

(a) A specific license issued by the cabinet pursuant to 902 KAR 100:040 and this administrative regulation;

(b) A specific license issued by the U.S. Nuclear Regulatory Commission or an agreement state; or

(c) A general license pursuant to 902 KAR 100:050 or equivalent regulations of the U.S. Nuclear Regulatory Commission or an agreement state.

Section 2. Applicability. This administrative regulation shall apply to a licensee. Except as established in subsections (1) through (4) of this section, the licensee shall comply with 10 C.F.R. Part 70.

(1) The licensee shall not be subject to:

(a) 10 C.F.R. 70.1(c), (d), and (e);

(b) 10 C.F.R. 70.4 Definitions:

1. Commencement of Construction (2); and

2. Construction (9)(ii);

(c) 10 C.F.R. 70.5;

(d) 10 C.F.R. 70.8;

(e) 10 C.F.R. 70.10(b);

(f) 10 C.F.R. 70.13;

(g) 10 C.F.R. 70.14;

(h) 10 C.F.R. 70.20a;

(i) 10 C.F.R. 70.20b;

(j) 10 C.F.R. 70.21(a)(1), (c), (f), (g), and (h);

(k) 10 C.F.R. 70.22(b), (c), (f), (g), (h), (i), (j), (k), (l), (m), and

(n);

(l) 10 C.F.R. 70.23(a)(6), (a)(7), (a)(8), (a)(9), (a)(10), (a)(11),

(a)(12), and (b);

(m) 10 C.F.R. 70.23a;

(n) 10 C.F.R. 70.24;

(o) 10 C.F.R. 70.25(a)(1);

(p) 10 C.F.R. 70.31(c), (d), and (e);

(q) 10 C.F.R. 70.32(a)(1), (a)(4), (a)(5), (a)(6), (a)(7), (b)(1),

(b)(3), (b)(4), (c), (d), (e), (f), (g), (h), (i), (j), and (k);

(r) 10 C.F.R. 70.37;

(s) 10 C.F.R. 70.40;

(t) 10 C.F.R. 70.42(b)(6);

(u) 10 C.F.R. 70.44;

(v) 10 C.F.R. 70.52;

(w) 10 C.F.R. 70.55(c);

(x) 10 C.F.R. 70.59;

(y) 10 C.F.R. 70.60;

(z) 10 C.F.R. 70.61;

- (aa) 10 C.F.R. 70.62;
- (bb) 10 C.F.R. 70.64;
- (cc) 10 C.F.R. 70.65;
- (dd) 10 C.F.R. 70.66;
- (ee) 10 C.F.R. 70.72;
- (ff) 10 C.F.R. 70.73;
- (gg) 10 C.F.R. 70.74;
- (hh) 10 C.F.R. 70.76
- (ii) 10 C.F.R. 70.82; and
- (jj) 10 C.F.R. Appendix A to Part 70.

(2) Reference to the NRC, the Commission, or an agreement state shall be deemed to reference the Cabinet for Health and Family Services, Department for Public Health, Radiation Health Branch, the NRC, or an agreement state.

(3) Each application for a specific license shall be filed pursuant to 902 KAR 100:0195.

(4) Notifications, reports, and correspondence required by 10 C.F.R. 70 shall be directed to the manager, Radiation Health Branch, at:

- (a) 275 East Main Street, Mailstop HS1-C-A, Frankfort, Kentucky 40621;
- (b) (502) 564-1492: Facsimile
- (c) (502) 564-3700: Telephone, Monday through Friday, 8 a.m. to 4:30 p.m.; or
- (d) (800) 255-2587: Telephone, for hours except those established in paragraph (c) of this subsection.

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

APPROVED BY AGENCY: May 26, 2023

FILED WITH LRC: June 7, 2023 at 2:35 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2023, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by August 14, 2023, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2023. 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

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes procedures and criteria for the issuance of licenses to receive title to, own, acquire, deliver, receive, possess, use, and transfer special nuclear material, and establishes and provides for the terms and conditions upon which the cabinet will issue such licenses.

(b) The necessity of this administrative regulation: This new administrative regulation is necessary to protect the public from improper use and disposal of special nuclear material.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.844 requires the cabinet to provide by administrative regulation the requirements for the licensing, use,

and disposal of radioactive materials.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new administrative regulation ensures all those engaged in the licensing, use, transfer, and disposal of special nuclear material meet regulatory 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: 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: There are two (2) licensees for the use of special nuclear material issued by the Radiation Health Branch (RHB) at this time.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: There are no new actions required for compliance with this new administrative regulation. The RHB will need to modify the existing special nuclear material licenses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): There is no anticipated change in cost for the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By adopting 10 C.F.R. Part 70, the state will put special nuclear material licensing and use in a single regulation instead of multiple regulations. This will reduce the amount of time needed to research applicable regulations and provide consistency with the methods used by the Nuclear Regulatory Commission (NRC). It will be easier for the licensee to review existing guidance documents for daily use of special nuclear material.

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

(a) Initially: This program is already operating. There is a minimal cost to implement this administrative regulation.

(b) On a continuing basis: This program is already operating. Adopting the new regulation will reduce cost in the long term.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This new administrative regulation does not affect funding.

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

(9) TIERING: Is tiering applied? Tiering is not applied as all entities using radioactive source material must meet NRC 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 Radiation Health Branch in the Department for Public Health 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 194A.050(1) and 211.844.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 regulation does not generate revenue.

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

(c) How much will it cost to administer this program for the first year? This new administrative regulation does not add costs to the agency.

(d) How much will it cost to administer this program for subsequent years? This new administrative regulation does not add costs to the agency.

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 new administrative regulation does not impact the costs of the regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This new administrative regulation does not impact the costs of the regulated entities.

(c) How much will it cost the regulated entities for the first year? This new administrative regulation will not result in cost to the regulated entities.

(d) How much will it cost the regulated entities for subsequent years? This new administrative regulation will not result in cost 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 (+/-):

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. Atomic Energy Act of 1954, 42 U.S.C. 2021, as amended, and 10 C.F.R. Part 70.

(2) State compliance standards. As an agreement state with the Nuclear Regulatory Commission the state is required to have a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the state covered by the proposed agreement. The state is required to adopt compliance standards for the protection of the public health, safety, and the environment from hazards associated with such material which are equivalent, to the extent practicable, or more stringent than, standards adopted and enforced by the Commission for the same purpose.

(3) Minimum or uniform standards contained in the federal mandate. In accordance with 42 U.S.C. 2021(g), the commission is

authorized and directed to cooperate with the states in the formulation of standards for protection against hazards of radiation to assure that state and commission programs for protection against hazards of radiation will be coordinated and compatible. Pursuant to 42 U.S.C. 2021(a)(3) the purpose of this standard is to promote orderly regulatory pattern between the commission and state governments with respect to nuclear development and use and regulation of byproduct, source, and special nuclear materials.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable as there are no stricter standards, or additional or different responsibilities or requirements.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Public Health Protection and Safety

(New Administrative Regulation)

902 KAR 100:200. Licenses and radiation safety requirements for irradiators.

RELATES TO: KRS 194A.005(1), 211.180(1), 211.842-211.852, 211.990(4), 10 C.F.R. Part 36, 42 U.S.C. 2021(b)

STATUTORY AUTHORITY: KRS 194A.050(1), 211.844(1)

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 operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.844(1) requires the cabinet to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation establishes procedures, criteria, terms, and conditions upon which the cabinet issues licenses for special nuclear material.

Section 1. Definitions. (1) "Agreement state" means a state that the United States Nuclear Regulatory Commission (NRC) or the United States Atomic Energy Commission has entered into an effective agreement under subsection 274 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(b) et seq.)

(2) "Cabinet" is defined by KRS 194A.005(1)

(3) "Licensee" means a person who holds:

(a) A specific license issued by the cabinet pursuant to 902 KAR 100:040 and this administrative regulation;

(b) A specific license issued by the U.S. Nuclear Regulatory Commission or an agreement state; or

(c) A general license pursuant to 902 KAR 100:050 or equivalent regulations of the U.S. Nuclear Regulatory Commission or an agreement state.

Section 2. Applicability. This administrative regulation shall apply to a licensee. Except as established in subsections (1) through (4) of this section, the licensee shall comply with 10 C.F.R. Part 36.

(1) The licensee shall not be subject to:

(a) 10 C.F.R. 36.2, Definitions:

1. Commencement of Construction (2); and

2. Construction (9)(ii);

(b) 10 C.F.R. 36.8;

(c) 10 C.F.R. 36.91; and

(d) 10 C.F.R. 36.93.

(2) Reference to the NRC, the Commission, or an agreement state shall be deemed to reference the Cabinet for Health and Family Services, Department for Public Health, Radiation Health Branch, the NRC, or an agreement state.

(3) Each application for a specific license shall be filed pursuant to this administrative regulation.

(4) Notifications, reports, and correspondence required by 10

C.F.R. 36 shall be directed to the manager, Radiation Health Branch, at:

- (a) 275 East Main Street, Mailstop HS1-C-A, Frankfort, Kentucky 40621;
- (b) (502) 564-1492: Facsimile;
- (c) (502) 564-3700: Telephone, Monday through Friday, 8 a.m. to 4:30 p.m.; or
- (d) (800) 255-2587: Telephone, for hours except those established in paragraph (c) of this subsection.

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

APPROVED BY AGENCY: May 26, 2023

FILED WITH LRC: June 7, 2023 at 2:35 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2023, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by August 14, 2023, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2023. 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

- (1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes the requirements for the issuance of a license authorizing the use of sealed sources containing radioactive materials in irradiators used to irradiate objects or materials using gamma radiation. This part also contains radiation safety requirements for operating irradiators.

(b) The necessity of this administrative regulation: This new administrative regulation is necessary to protect the public from improper use and disposal of radioactive source material.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.844 requires the cabinet to provide by administrative regulation the requirements for the licensing, use, and disposal of radioactive materials.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new administrative regulation ensures all those engaged in the licensing, use, transfer, and disposal of radioactive source material meet the regulatory 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: 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: The Radiation Health Branch within the Department for Public Health is the only entity affected by this new administrative regulation. There are no irradiators in Kentucky at this time, so no licensees 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: There will be no new actions required for compliance with this new administrative regulation. Adopting 10 C.F.R. Part 36 by reference will expedite the process if a company desires to site an irradiator in Kentucky. There will be no impact to existing radioactive materials licensees.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no anticipated change in cost for existing regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Adopting 10 C.F.R. Part 36 by reference will expedite the application process a new company will have to follow to perform irradiator work in Kentucky.

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

(a) Initially: This new administrative regulation will not add cost to the agency.

(b) On a continuing basis: This new administrative regulation will not impact ongoing costs to the agency.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Radiation Health Branch is funded through a mix of state general fund dollars and the various fees associated with issuing licenses.

(7) Provide an assessment of whether an 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 needed to implement this new administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied. The requirements of this new administrative regulation are applied equally to all licensees.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Radiation Health Branch within the Department for Public Health 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 and 211.844.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 regulation does not generate revenue.

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

(c) How much will it cost to administer this program for the first year? This new administrative regulation does not impact cost for the agency.

(d) How much will it cost to administer this program for subsequent years? This new administrative regulation does not impact cost for the agency.

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 new administrative regulation may result in minimal cost savings for the regulated entities. This new administrative regulation reduces the administrative burden of having to research and follow duplicative state and federal requirements.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This new administrative regulation may result in minimal cost savings for the regulated entities. This new administrative regulation reduces the administrative burden of having to research and follow duplicative state and federal requirements.

(c) How much will it cost the regulated entities for the first year? This new administrative regulation will have no impact on cost for the regulated entities.

(d) How much will it cost the regulated entities for subsequent years? This new administrative regulation will have no impact on cost for 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 (+/-):

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 new administrative regulation does not have a major economic impact.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. Atomic Energy Act of 1954, 42 U.S.C. 2021, as amended, and 10 C.F.R. Part 36.

(2) State compliance standards. As an agreement state with the Nuclear Regulatory Commission the state is required to have a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the state covered by the proposed agreement. The state is required to adopt compliance standards for the protection of the public health, safety, and the environment from hazards associated with such material which are equivalent, to the extent practicable, or more stringent than, standards adopted and enforced by the Commission for the same purpose.

(3) Minimum or uniform standards contained in the federal mandate. In accordance with 42 U.S.C. 2021(g), the commission is authorized and directed to cooperate with the states in the formulation of standards for protection against hazards of radiation to assure that state and commission programs for protection against hazards of radiation will be coordinated and compatible. Pursuant to 42 U.S.C. 2021(a)(3) the purpose of this standard is to promote orderly regulatory pattern between the commission and state governments with respect to nuclear development and use and regulation of byproduct, source, and special nuclear materials.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable as there are no stricter standard, or additional or different responsibilities or requirements in this administrative regulation.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Family Support (New Administrative Regulation)

921 KAR 3:095. Elderly Simplified Application Project or "ESAP".

RELATES TO: 7 C.F.R. 273.2, 273.10

STATUTORY AUTHORITY: KRS 194A.050(1), KRS 205.1783, 7 C.F.R. 271.4

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 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 205.1783(1)(b) requires the cabinet to request a waiver from the United States Department of Agriculture to implement an Elderly Simplified Application Project for individuals who have no earned income and who are over sixty (60) years of age or who are disabled. KRS 205.1783(f) requires the cabinet to promulgate administrative regulations necessary to administer this section. 7 C.F.R. 271.4 delegates the administration of the Supplemental Nutrition Assistance Program (SNAP) to the state agency. This administrative regulation establishes requirements for the Elderly Simplified Application Project (ESAP), a demonstration project administered by the cabinet to improve access to SNAP for elderly and disabled individuals.

Section 1. Definitions.

(1) "Elderly Simplified Application Project" or "ESAP" means a SNAP program for individuals who are age sixty (60) and older or disabled, with no earned income.

(2) "Regular SNAP benefits" means SNAP benefits received in accordance with the procedures established in:

- (a) 921 KAR 3:020, Financial requirements;
- (b) 921 KAR 3:027, Technical requirements;
- (c) 921 KAR 3:030, Application process; and
- (d) 921 KAR 3:035, Certification process.

(3) "Shelter costs" means monthly rent or mortgage expenses as stated by the applicant.

Section 2. ESAP Program Procedures. Unless a different procedure or process for a SNAP requirement is specified in this administrative regulation, all SNAP requirements specified in 921 KAR Chapter 3 shall apply to ESAP, including the process for:

- (1) A fair hearing;
- (2) An administrative disqualification hearing;
- (3) An appeal;
- (4) A disqualification;
- (5) A claim and collection of a claim; and
- (6) EBT issuance.

Section 3. Eligibility for ESAP.

(1) With the exception established in subsection (4) of this section, an individual shall qualify for ESAP benefits if the individual:

- (a) Is a Kentucky resident;
- (b) Is:
 - 1. Age sixty (60) or older; or
 - 2. Disabled;
- (c) Has no earned income; and

(d) Is not institutionalized.

(2) If an individual who otherwise meets the requirements established in subsection (1) of this section resides with an individual who is not a member of the applicant's household as defined in 921 KAR 3:010, the individual shall be eligible if food is purchased and prepared separately.

(3) The cabinet shall use available computer matches to verify an applicant's marital and institutional status.

(4) Except as permitted by subsection (6) of this section, if a household member does not meet the criteria established in subsection (1) or (2) of this section, the household:

(a) Shall not be eligible for ESAP; and

(b) May apply for regular SNAP benefits in accordance with 921 KAR 3:030.

(5) An individual shall not receive ESAP benefits and regular SNAP benefits at the same time.

(6) A child under the age of eighteen (18) who resides with an individual who is eligible for ESAP may be included in the household.

Section 4. ESAP Application Process.

(1) ESAP eligibility shall be reviewed when an application for SNAP benefits is completed and submitted to the cabinet.

(2) In accordance with 7 C.F.R. 273.2(g), the cabinet shall provide an eligible household an opportunity to participate within thirty (30) calendar days of the date the application required by subsection (1) is submitted to the cabinet.

Section 5. ESAP Certification Process.

(1) The cabinet shall process a SNAP application pursuant to 921 KAR 3:030.

(2) Information necessary to certify a household for ESAP shall be obtained from computer matches, with the exception of information considered questionable.

(3) The cabinet shall certify an eligible household for ESAP benefits for thirty-six (36) months, with a reminder notice of change reporting requirements sent in the 11th month and 23rd month of the certification period.

(4) In accordance with 7 C.F.R. 273.10(g), the cabinet shall send an applicant a notice of certification or denial.

(5) In the month preceding the last month of the household's certification period, the cabinet shall send a program participant an "ESAP-2, Elderly Simplified Assistance Program (ESAP) Recertification," which shall be submitted to the cabinet prior to the end of the certification period for consideration of continued eligibility.

Section 6. ESAP Benefits.

(1) The cabinet shall notify an ESAP household of their approved monthly benefit amount.

(2) The ESAP benefit amount shall be based on:

(a) Shelter costs;

(b) Household size; and

(c) Medical expenses.

Section 7. Changes in Household Circumstances.

(1) A household receiving ESAP benefits shall be required to report changes to the cabinet that result in an individual no longer meeting the eligibility requirements of Section 3 of this administrative regulation within ten (10) calendar days.

(2) The cabinet shall process changes in household circumstances based on information received from computer matches.

(3) If information voluntarily reported by the household is contradictory to computer match data, the cabinet shall not act upon the information until the next recertification unless the information is a change in a household member's:

(a) Name;

(b) Date of birth; or

(c) Address.

(4) If a change in household circumstances results in a change in the benefit amount, the cabinet shall provide the household with notice of the change.

Section 8. Incorporation by Reference.

(1) "ESAP-2, Elderly Simplified Assistance Program (ESAP) Recertification," 06/23, is incorporated by reference.

(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>.

LESA DENNIS, Acting Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: May 26, 2023

FILED WITH LRC: June 7, 2023 at 2:345 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2023, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by August 14, 2023, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2023. 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

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the Elderly Simplified Application Project (ESAP), a Supplemental Nutrition Assistance Program (SNAP) demonstration project administered by the cabinet to improve access to food for elderly and disabled individuals.

(b) The necessity of this administrative regulation: This administrative regulation and the administration of this program is required by KRS 205.1783(1), originally passed as House Bill 7 in the 2022 Regular Session.

(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 implementing programs necessary for the proper administration of the cabinet and its programs. KRS 205.1783(1)(b)1. requires the cabinet to request a waiver from the United States Department of Agriculture to implement an Elderly Simplified Application Project for individuals who have no earned income and who are over sixty (60) years of age or who are disabled. The waiver was requested by the cabinet and approved by the federal government. KRS 205.1783(f) requires the cabinet to promulgate administrative regulations necessary to administer this section.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills a statutory requirement to request a waiver for this program and implement it once approved by the federal government.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All SNAP recipients whose households solely contain individuals who are elderly or disabled (with the exception of children) may benefit from this program. As of January 2023, 102,698 households enrolled in SNAP met these criteria, which is approximately 40% of all households receiving SNAP.

(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: Households solely containing individuals who are elderly or have disabilities will have a simplified application process to go through in order to continue receiving Supplemental Nutrition Assistance Program benefits in purchasing food items. There are no additional actions.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Households containing only individuals who are elderly or disabled will have improved access to assistance in purchasing food.

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

(a) Initially: The only cost to implement this program will be that of minor system changes and staff training. Administrative costs are funded 50% by the federal government.

(b) On a continuing basis: Once established, there will be no continuing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SNAP benefits are 100% federally funded. Administrative functions are funded at a 50% state and 50% federal match rate. The funding has been appropriated in the enacted budget.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner for households containing only eligible individuals.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.4

(2) State compliance standards. KRS 194A.050(1), 205.1783

(3) Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate and granted waiver request.

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

(1) What 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 administers this administrative program.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 7 C.F.R. 271.4, KRS 194A.050(1), 205.1783.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 new revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate new revenue for state or local government, although retailers, grocers, farmers, and local communities benefit from the federal dollars spent through SNAP.

(c) How much will it cost to administer this program for the first year? This administrative regulation amendment will require system design changes and staff training of less than \$500,000. The federal government funds half of all administrative costs for SNAP.

(d) How much will it cost to administer this program for subsequent years? There will be no costs to administer for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation and the new program being administered will improve food access for households comprised completely of individuals who are elderly or disabled. This will result in a cost savings for these households.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Ongoing cost savings cannot be anticipated at this time.

(c) How much will it cost the regulated entities for the first year? There is no cost to affected entities.

(d) How much will it cost the regulated entities for subsequent years? There are no anticipated ongoing costs to affected entities.

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 amendment is not anticipated to have a major economic impact. This administrative regulation will not have a negative or adverse economic impact. This administrative regulation and new program will improve food access for households containing elderly or disabled individuals and also provide federal funding to grocers, retailers, farmers, and other members of local communities.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of June 13, 2023

Call to Order and Roll Call

The June meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, June 13, 2023 at 1:00 p.m. in Room 149 of the Capitol Annex. Senator West, Co-Chair, called the meeting to order, the roll call was taken.

Present were:

Members: Senator Stephen West, Co-Chair; Senators Julie Raque Adams and Damon Thayer; Representatives Randy Bridges, Deanna Frazier Gordon, and Daniel Grossberg.

LRC Staff: Stacy Auterson, Ange Darnell, Emily Harkenrider, Karen Howard, Carrie Nichols, and Christy Ritchie.

Guests: Graham Gray, Farrah Petter, Auditor of Public Accounts; Matt Stephens, Department for Local Government; Christi LeMay, Karoline Munson, Board of Optometric Examiners; Jeffrey Prather; Board of Nursing; Dave Dreves, Jenny Gilbert, Ben Robinson, Rich Storm, Department of Fish and Wildlife Resources; Michael Kennedy, Department for Environmental Protection; Amy Barker, Dena Burton, William Codell, Department of Juvenile Justice; Timothy Arnold, Post-Trial Division; Bruce Roberts, Marc Rudder, John Wood, Fire Commission; Lilly Coiner, Drew Conners, Jamie Eads, Jennifer Wolsing, Horse Racing Commission; Kara Daniel, Adam Mather, Office of Inspector General; Laura Begin, Chelsea Harrod, Veronica Sears, Department for Community Based Services.

Administrative Regulations Reviewed by this Subcommittee:

GENERAL GOVERNMENT CABINET: Auditor of Public Accounts: Audits

045 KAR 001:040. Audits of county fee officials. Graham Gray, general counsel, and Farrah Petter, assistant state auditor, represented the auditor.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 and 3 through 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Department for Local Government: County Attorney

109 KAR 017:010. County Attorney Annual Settlement. Matt Stephens, general counsel, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

BOARDS AND COMMISSIONS: Board of Optometric Examiners

201 KAR 005:055. Telehealth. Christi LeMay, executive director, and Karoline Munson, board member, represented the board.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Nursing

201 KAR 020:478. Dialysis technician scope of practice, discipline, and miscellaneous requirements. Jeffrey Prather, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Fish

301 KAR 001:001. Definitions for 301 KAR Chapter 1. Jenny Gilbert, legislative liaison, and Rich Storm, commissioner, represented the department.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY,

FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Game

301 KAR 002:222. Waterfowl hunting requirements on public lands.

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.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Asbestos

401 KAR 058:040. Requirements for asbestos abatement entities. Michael Kennedy, director, represented the department.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 through 8, 10, 11, 13, and 14 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Juvenile Justice: Child Welfare

505 KAR 001:120. Department of Juvenile Justice Policies and Procedures Manual: Health and Safety Services. Amy Barker, assistant general counsel, and William Codell, attorney, represented the department.

In response to questions by Co-Chair West, Ms. Barker stated that these revisions were based on legislative changes and established provisions for nonlethal control of juvenile offenders and for suicide prevention. Initially, these changes were developed in response to recent riots. After the 2023 Regular Session of the General Assembly generated legislative changes, those were added to the amendments.

In response to a question by Representative Bridges, Mr. Codell stated that the department currently had policies to separate male and female juvenile offenders. There were no current provisions for other gender-related categories.

A motion was made and seconded to approve the following amendments: (1) to amend DJJPP 400 to: (a) delete definitions relating to restraints and control methods as those provisions have been replaced by 505 KAR 1:210 & E; and (b) add definitions for "Licensed Behavioral Health Professional" and "line of sight"; (2) to amend DJJPP 405.1 to: (a) add referral for immediate medical evaluation as an option for the initial behavioral health screening; and (b) clarify that residents with acute conditions shall be kept "under continuous observation" until hospitalized or directed

otherwise; (3) to amend DJJPP 405.4 to: (a) replace references to “juveniles” with “youth” in conformity with the other policies; and (b) clarify procedures for immediate mental health evaluations, staff responsibilities, and documentation and notification requirements; (4) to delete DJJPP 406 as those provisions have been replaced by 505 KAR 1:210 & E; and (5) to amend Section 1 and DJJPP 400, 405.1, and 405.4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

505 KAR 001:140. Department of Juvenile Justice Policies and Procedures Manual: Detention Services. Timothy Arnold, director, Post-trial Division, Department of Public Advocacy, appeared in opposition to this administrative regulation.

In response to questions by Co-Chair West, Mr. Arnold stated that the Department of Public Advocacy (DPA) was opposed to this administrative regulation because it did not provide for a regional system of justice, as statutorily required. Services were usually provided to juveniles based on geographic location, which became a problem if the youth were dispersed statewide. There had been problems with officials being unable to get juveniles to trial due to distance, and some youth had to appear in court virtually. If released, a juvenile might be very far from home. The current policy was nonregional and did not establish any plan for future regionalization. If the institutions did regionalize, the institutions would be in violation of this administrative regulation.

In response to questions by Co-Chair West, Ms. Barker stated that language related to a separate female-only facility was removed. Reorganizing these institutions by region required time for transition. Some regions were insufficiently staffed. The department had to consider the risk level when deciding where to place a juvenile offender. Juvenile offenders were placed based on sex (male or female) and risk level (high or low). Security was the first priority. This administrative regulation represented a phase toward regionalization. Mr. Codell stated that it was necessary for the department to maintain some discretion regarding placing juvenile offenders. Sometimes courts ordered juvenile offenders to be separated one from another in joint criminal situations. A very assaultive youth needed to be put into a higher security facility. There were seven (7) regions; however, because of a separate facility for females and high and low-security units, there were essentially three (3) regions. Jefferson County was expected to open its facility soon, which would probably represent a region unto itself.

Representative Frazier Gordon stated that transportation costs impacted local government staff and budgets.

In response to a question by Co-Chair West, Mr. Arnold stated that this administrative regulation did not reference regionalization in any way and was not regional in practice. This was a very inefficient system. Mr. Codell stated that the system was currently regional with some deviation necessitated by court decisions and security concerns.

In response to a question by Representative Grossberg, Mr. Codell stated that the department's long-term goal was to clarify regionalization provisions sometime after the Jefferson County facility opened and after general transitioning.

In response to a question by Senator Raque Adams, Mr. Codell stated that capacity was a concern pertaining to the department's ability to fully implement regionalization. Staffing in particular was an obstacle because it was difficult to meet staffing ratios in some areas. Staff recruitment and retention was a priority.

Co-Chair West stated that DPA's concerns seemed to be valid; however, a finding of deficiency did not seem prudent because the department was still in a transition period. The Interim Joint Committee on Judiciary should consider this topic. Representative Grossberg stated agreement with taking this matter up at the Interim Joint Committee on Judiciary and stated that he hoped there would not be procrastination with transitioning to regionalization.

A motion was made and seconded to approve the following amendments: (1) to amend DJJPP 700 to: (a) delete definitions relating to restraints and control methods as those provisions have been replaced by 505 KAR 1:210 & E; and (b) add definitions for

“dangerous instrument” and “Licensed Behavioral Health Professional”; (2) to amend DJJPP 700.1 to: (a) delete requirement of having at least one (1) female only facility; and (b) remove references to male youth in the procedures for high and low-security detention facilities; (3) to delete DJJPP 711 as those provisions have been replaced by 505 KAR 1:220 & E; (4) to delete DJJPP 713 as those provisions have been replaced by 505 KAR 1:210 & E; (5) to amend DJJPP 717 to replace the protocol for suicidal youth and isolation with a reference to DJJPP 405.4; and (6) to amend Section 1 and DJJPP 700, 712, and 717 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

COMMUNITY AND TECHNICAL COLLEGE SYSTEM: Fire Commission: Commission on Fire Protection Personnel Standards and Education

739 KAR 002:060. Certification and qualifications of fire and emergency services instructors. Bruce Roberts, deputy executive director; Marc Rudder, director of training; and John Wood, general counsel, represented the commission.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Kentucky Horse Racing Commission: Incentive and Development Funds

810 KAR 007:040. Kentucky Standardbred Development Fund and Kentucky Standardbred Breeders' Incentive Fund. Drew Conners, director, and Jennifer Wolsing, general counsel, represented the commission.

In response to a question by Senator Thayer, Mr. Conners stated that, similar to the thoroughbred program, if the initial nomination deadline was missed, this administrative regulation provided another opportunity to be part of this program. Senator Thayer stated that Kentucky's third harness track just opened in Corbin.

In response to a question by Co-Chair West, Mr. Conners stated that this change might increase purses some; however, the impetus was primarily to increase opportunities to participate in this program.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 20, 23, and incorporated material to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 23 to add incorporated material. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: State Health Plan

900 KAR 005:020E. State Health Plan for facilities and services. Kara Daniel, deputy inspector general, and Adam Mather, inspector general, represented the office.

Certificate of Need

900 KAR 006:075E. Certificate of need nonsubstantive review.

Essential Personal Care Visitor Program

900 KAR 014:010E. Essential personal care visitor programs; visitation guidelines.

In response to questions by Co-Chair West, Mr. Mather stated that this amendment expanded the spectrum of facilities to which this administrative regulation applied. Initially, these provisions were promulgated pursuant to the coronavirus (COVID-19) pandemic, and now these provisions would also apply to other communicable diseases.

Controlled Substances

902 KAR 055:015E. Schedules of controlled substances.

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Department for Community Based Services: Child Welfare

922 KAR 001:100. Public agency adoptions. Laura Begin, regulation coordinator; Chelsea Harrod, social service specialist; and Veronica Sears, branch manager, Adoption Services Branch, represented the department.

922 KAR 001:330. Child protective services.

The following administrative regulations were deferred or removed from the June 13, 2023, subcommittee agenda:

PERSONNEL CABINET: Personnel Cabinet; Classified

101 KAR 002:034. Classified compensation administrative regulations.

101 KAR 002:095. Classified service general requirements.

101 KAR 002:181. Repeal of 101 KAR 002:180.

Unclassified

101 KAR 003:045. Compensation plan and pay incentives for unclassified service.

BOARDS AND COMMISSIONS: Board of Licensure for Long-Term Care Administrators

201 KAR 006:060. Fees.

Board of Chiropractic Examiners

201 KAR 021:025. Board; officers, duties, and compensation.

201 KAR 021:041. Licensing; standards, fees.

201 KAR 021:042. Standards, applications and approval of continuing education.

201 KAR 021:075. Peer review committee procedures and fees.

201 KAR 021:095. Licensure, registration, and standards of persons performing peer review.

201 KAR 021:105. Telehealth chiropractic services.

Board of Social Work

201 KAR 023:016. Temporary permission to practice.

JUSTICE AND PUBLIC SAFETY CABINET: Internal Investigation Branch: Special Law Enforcement Officers

500 KAR 002:020. Filing and processing SLEO commissions.

Department of Corrections: Office of the Secretary

501 KAR 006:150. Eastern Kentucky Correctional Complex policies and procedures.

PUBLIC PROTECTION CABINET: Kentucky Horse Racing Commission: Flat and Steeplechase Racing

810 KAR 004:010E. Horses.

Medication Guidelines

810 KAR 008:020. Drug, medication, and substance classification schedule.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: State Health Plan

900 KAR 005:020. State Health Plan for facilities and services.

Certificate of Need

900 KAR 006:075. Certificate of need nonsubstantive review.

Department for Medicaid Services: Medicaid Services

*907 KAR 001:038E. Hearing Program coverage and

requirements.

*907 KAR 001:126E. Dental services' coverage provisions and requirements.

*907 KAR 001:632E. Vision program coverage provisions and requirements.

**Pursuant to KRS 13A.030(2)(a), these administrative regulations were found deficient at the May 9, 2023 ARRS meeting.*

Payment and Services

907 KAR 003:190. Reimbursement for treatment related to clinical trials.

The subcommittee adjourned at 1:45 p.m. The next meeting of this subcommittee was tentatively scheduled for July 13, 2023, at 1 p.m.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(11), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. If a quorum was present and the regulation was not deferred, administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

**INTERIM JOINT COMMITTEE ON NATURAL RESOURCES &
ENERGY**

Meeting of June 8, 2023

The Interim Joint Committee on Natural Resources and Energy met on June 8, 2023 and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on April 5, 2023, May 30, 2023, and June 7, 2023, pursuant to KRS 13A.290(6):

April 5, 2023

301 KAR 003:120
301 KAR 002:245

May 30, 2023

301 KAR 005:022
301 KAR 005:020
301 KAR 005:010
301 KAR 005:001
301 KAR 002:300
301 KAR 002:144

June 7, 2023

301 KAR 004:110
301 KAR 002:090
301 KAR 002:015

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(8) and 13A.030(2):

none

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

none

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

none

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the June 8, 2023 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON VETERANS, MILITARY
AFFAIRS, AND PUBLIC PROTECTION
Meeting of June 21, 2023**

The Interim Joint Committee on Veterans, Military Affairs, and Public Protection met on June 21, 2023 and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on March 7, 2023, pursuant to KRS 13A.290(6):

017 KAR 003:020

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(8) and 13A.030(2):

none

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

**INTERIM JOINT COMMITTEE ON HEALTH SERVICES
Meeting of June 21, 2023**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health Services for its meeting of June 21, 2023, having been referred to the Committee on April 5, 2023 and May 3, 2023, pursuant to KRS 13A.290(6):

April 5, 2023

201 KAR 022:170 Proposed
202 KAR 007:201 Proposed
202 KAR 007:301 Proposed
202 KAR 007:330 Proposed
202 KAR 007:401 Proposed
202 KAR 007:601 Proposed
902 KAR 020:470 Proposed
902 KAR 020:490 Proposed
902 KAR 020:490 Emergency

May 3, 2023

201 KAR 002:380 Proposed
201 KAR 005:002 Proposed
201 KAR 020:411 Proposed
201 KAR 020:472 Proposed
201 KAR 020:476 Proposed
902 KAR 055:110 Proposed
907 KAR 001:082 Proposed

Committee activity in regards to review of the above-referenced administrative regulations is reflected in the minutes of the June 21, 2023 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON FAMILIES AND CHILDREN
Meeting of June 21, 2023**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Families & Children for its meeting of June 21, 2023, having been referred to the Committee on May 9, 2023, pursuant to KRS 13A.290(6):

May 9, 2023

910 KAR 001:180

Committee activity in regards to review of the above-referenced administrative regulations is reflected in the minutes of the June 21, 2023 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

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**INTERIM JOINT COMMITTEE ON LICENSING, OCCUPATIONS,
AND ADMINISTRATIVE REGULATIONS
Meeting of June 22, 2023**

The Interim Joint Committee on Licensing, Occupations, and Administrative Regulations met on June 22, 2023 and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on May 3, 2023, pursuant to KRS 13A.290(6):

201 KAR 001:190

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(8) and 13A.030(2):

none

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

201 KAR 001:190

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

none

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the June 22, 2023 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 50th year of the *Administrative Register of Kentucky*, from July 2022 through June 2023.

Locator Index - Effective Dates

A - 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 "48 Ky.R." or "49 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 by the end of the last Register year.

KRS Index

A - 7

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

A - 10

A list of administrative regulations for which certification letters have been filed pursuant to KRS 13A.3104 during this Register year.

Technical Amendment Index

A - 11

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 are NOT 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

A - 12

A general index of administrative regulations published during this Register year, and is primarily broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	Ky.R. Page No.	Effective Date	Regulation Number	Ky.R. Page No.	Effective Date
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Administrative regulations published in previous Register years may appear in this index if a regulation had not completed the KRS Chapter 13A review process by the beginning of *Register* year 50. 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.

016 KAR 009:080E	49 Ky.R. 2200	4-26-2023
016 KAR 009:100E	49 Ky.R. 2205	4-26-2023
040 KAR 009:010E	49 Ky.R. 1563	1-6-2023
040 KAR 009:020E	49 Ky.R. 1565	1-6-2023
201 KAR 023:016E	49 Ky.R. 976	10-3-2022
201 KAR 023:051E	49 Ky.R. 1239	11-15-2022
202 KAR 007:555E	50 Ky.R. 5	5-22-2023
505 KAR 001:120E	49 Ky.R. 1567	1-13-2023
Am Comments	1886	3-6-2023
505 KAR 001:140E	49 Ky.R. 1569	1-13-2023
Am Comments	1888	3-6-2023
As Amended	2075	4-11-2023
505 KAR 001:200E	49 Ky.R. 2208	5-15-2023
505 KAR 001:210E	49 Ky.R. 2211	5-15-2023
505 KAR 001:220E	49 Ky.R. 2213	5-15-2023
701 KAR 008:010E	49 Ky.R. 984	10-13-2022
701 KAR 008:020E	49 Ky.R. 989	10-13-2022
701 KAR 008:030E	49 Ky.R. 998	10-13-2022
701 KAR 008:040E	49 Ky.R. 1001	10-13-2022
701 KAR 008:050E	49 Ky.R. 1005	10-13-2022
787 KAR 001:090E	49 Ky.R. 1571	12-22-2022
787 KAR 001:100E	49 Ky.R. 1575	12-22-2022
806 KAR 017:570E	49 Ky.R. 2215	5-15-2023
807 KAR 005:001E	49 Ky.R. 734	9-14-2022
810 KAR 004:010E	49 Ky.R. 2048	3-29-2023
900 KAR 005:020E	49 Ky.R. 1880	3-15-2023
Am Comments	2256	5-11-2023
900 KAR 006:075E	49 Ky.R. 1882	3-15-2023
Am Comments	2257	5-11-2023
900 KAR 006:080E	50 Ky.R. 11	5-19-2023
900 KAR 014:010E	49 Ky.R. 2052	3-29-2023
902 KAR 020:490E	49 Ky.R. 1576	12-29-2022
Replaced	2307	6-21-2023
902 KAR 055:015E	49 Ky.R. 2054	3-23-2023
907 KAR 001:038E	49 Ky.R. 2057	4-12-2023
As Amended	2261	5-9-2023
907 KAR 001:126E	49 Ky.R. 2062	4-12-2023
As Amended	2263	5-9-2023
907 KAR 001:632E	49 Ky.R. 2069	4-12-2023
As Amended	2268	5-9-2023
Am Comments	50 Ky.R. 14	
907 KAR 020:010E	49 Ky.R. 2234	5-15-2023
907 KAR 020:045E	49 Ky.R. 2237	5-15-2023

907 KAR 020:075E	49 Ky.R. 2240	5-15-2023
907 KAR 020:100E	49 Ky.R. 2243	5-15-2023
922 KAR 001:360E	49 Ky.R. 2248	5-15-2023

ORDINARY ADMINISTRATIVE REGULATIONS

011 KAR 005:001		
Amended	50 Ky.R. 66	
011 KAR 015:040		
Amended	50 Ky.R. 69	
011 KAR 015:110		
Amended	50 Ky.R. 71	
016 KAR 004:060		
Amended	49 Ky.R. 1810	
016 KAR 009:080		
Amended	49 Ky.R. 2334	
016 KAR 009:100		
Amended	49 Ky.R. 2339	
017 KAR 003:020		
Amended	49 Ky.R. 1469	
As Amended	1898	6-21-2023
032 KAR 001:020		
Amended	50 Ky.R. 73	
032 KAR 001:030		
Amended	50 Ky.R. 74	
032 KAR 001:046		
Amended	50 Ky.R. 231	
032 KAR 001:050		
Amended	50 Ky.R. 76	
032 KAR 004:020		
Amended	50 Ky.R. 232	
040 KAR 009:010		
As Amended	49 Ky.R. 1707	
040 KAR 009:020		
As Amended	2272	
040 KAR 009:020		
As Amended	49 Ky.R. 1709	
045 KAR 001:030		
Amended	49 Ky.R. 1473	
045 KAR 001:040		
Amended	49 Ky.R. 1958	
As Amended	50 Ky.R. 19	
101 KAR 002:034		
Amended	49 Ky.R. 1960	
101 KAR 002:095		
Amended	49 Ky.R. 1966	
101 KAR 002:181		
Amended	49 Ky.R. 2030	
101 KAR 003:045		
Amended	49 Ky.R. 1968	
104 KAR 001:010		
Amended	50 Ky.R. 78	
104 KAR 001:040		
Amended	50 Ky.R. 80	
104 KAR 001:050		
Amended	50 Ky.R. 82	
104 KAR 001:080		
Amended	50 Ky.R. 84	
104 KAR 001:100		
Amended	50 Ky.R. 86	
105 KAR 001:001		
Amended	49 Ky.R. 1535	
As Amended	1899	
105 KAR 001:220		
Amended	49 Ky.R. 2342	
105 KAR 001:365		
Amended	49 Ky.R. 1537	
As Amended	1900	

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Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
105 KAR 001:390			Amended	49 Ky.R. 1815	
As Amended	49 Ky.R. 317		As Amended	2282	
109 KAR 017:010	49 Ky.R. 2031		201 KAR 020:411		
As Amended	50 Ky.R. 19		Amended	49 Ky.R. 1642	
201 KAR 001:050			As Amended	2082	6-21-2023
Amended	49 Ky.R. 2347		201 KAR 020:472		
201 KAR 001:190			Amended	49 Ky.R. 1645	
Amended	49 Ky.R. 1639		As Amended	2084	6-21-2023
As Amended	2076	6-22-2023	201 KAR 020:476		
As Amended IJC	50 Ky.R. 19		Amended	49 Ky.R. 1649	
201 KAR 002:020			As Amended	2087	6-21-2023
Amended	50 Ky.R. 88		201 KAR 020:478		
201 KAR 002:050			Amended	49 Ky.R. 1652	
Amended	50 Ky.R. 90		Am Comments	2316	
201 KAR 002:076			As Amended	50 Ky.R. 23	
Amended	50 Ky.R. 91		201 KAR 020:700	49 Ky.R. 2424	
201 KAR 002:105			201 KAR 021:025		
Amended	50 Ky.R. 95		Amended	49 Ky.R. 1976	
201 KAR 002:205			201 KAR 021:041		
Amended	50 Ky.R. 99		Amended	49 Ky.R. 1978	
201 KAR 002:225			Am Comments	50 Ky.R. 50	
Amended	50 Ky.R. 101		201 KAR 021:042		
201 KAR 002:240			Amended	49 Ky.R. 1981	
Amended	50 Ky.R. 103		Am Comments	50 Ky.R. 52	
201 KAR 002:320			201 KAR 021:075		
Amended	50 Ky.R. 104		Amended	49 Ky.R. 1983	
201 KAR 002:340			201 KAR 021:095		
Amended	50 Ky.R. 108		Amended	49 Ky.R. 1985	
201 KAR 002:380			201 KAR 021:105	49 Ky.R. 2032	
Amended	49 Ky.R. 625		201 KAR 022:045		
Am Comments	1451		Amended	49 Ky.R. 2353	
As Amended	1755		201 KAR 022:170		
As Amended	2078	6-21-2023	Amended	49 Ky.R. 1483	
201 KAR 002:390			As Amended	1910	6-21-2023
Amended	50 Ky.R. 110		201 KAR 023:016	49 Ky.R. 1214	
201 KAR 005:002	49 Ky.R. 1371		201 KAR 023:051	49 Ky.R. 1374	
Am Comments	1943		Am Comments	1803	
As Amended	2080	6-21-2023	As Amended	1910	
201 KAR 005:055			201 KAR 027:005		
Amended	49 Ky.R. 1974		Amended	50 Ky.R. 113	
As Amended	50 Ky.R. 22		201 KAR 027:008		
201 KAR 006:060			Amended	50 Ky.R. 115	
Amended	48 Ky.R. 3029		201 KAR 027:011		
201 KAR 008:533	49 Ky.R. 1859		Amended	50 Ky.R. 119	
As Amended	2273		201 KAR 027:012		
201 KAR 008:563	49 Ky.R. 1863		Amended	50 Ky.R. 126	
As Amended	2276		201 KAR 027:016		
201 KAR 016:550			Amended	50 Ky.R. 128	
Amended	49 Ky.R. 1473		202 KAR 007:201		
As Amended	1903		Amended	49 Ky.R. 1484	
201 KAR 016:552	49 Ky.R. 1540		As Amended	1911	6-21-2023
As Amended	1905		202 KAR 007:301		
201 KAR 016:560			Amended	49 Ky.R. 1488	
Amended	49 Ky.R. 1475		As Amended	1913	6-21-2023
As Amended	1907		202 KAR 007:330		
201 KAR 016:562	49 Ky.R. 1543		Amended	49 Ky.R. 1492	
As Amended	1908		As Amended	1916	6-21-2023
201 KAR 016:572			202 KAR 007:401		
Amended	49 Ky.R. 1478		Amended	49 Ky.R. 1497	6-21-2023
As Amended	1909		202 KAR 007:510		
201 KAR 016:610			Amended	49 Ky.R. 2355	
Amended	49 Ky.R. 1480		202 KAR 007:555		
201 KAR 019:225			Amended	50 Ky.R. 134	
Amended	49 Ky.R. 2349		202 KAR 007:601		
201 KAR 020:240			Amended	49 Ky.R. 1506	6-21-2023
Amended	49 Ky.R. 2351		301 KAR 001:001	49 Ky.R. 2034	
201 KAR 020:360			As Amended	50 Ky.R. 25	
Amended	49 Ky.R. 1812		301 KAR 001:122		
As Amended	2280		Amended	50 Ky.R. 140	
201 KAR 020:390			301 KAR 001:201		

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Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
Amended	50 Ky.R. 142		501 KAR 006:150		
301 KAR 001:410			Amended	49 Ky.R. 1824	
Amended	50 Ky.R. 147		Am Comments	50 Ky.R. 59	
301 KAR 002:015			501 KAR 016:310		
Amended	49 Ky.R. 1818		Amended	49 Ky.R. 2363	
As Amended	2284	6-8-2023	505 KAR 001:010		
301 KAR 002:090			Amended	49 Ky.R. 2365	
Amended	1819	6-8-2023	505 KAR 001:100		
301 KAR 002:144			Amended	49 Ky.R. 2370	
Amended	49 Ky.R. 1654		505 KAR 001:110		
As Amended	2089	6-8-2023	Amended	50 Ky.R. 170	
301 KAR 002:222			505 KAR 001:120		
Amended	49 Ky.R. 1987		Amended	49 Ky.R. 1668	
As Amended	50 Ky.R. 27		Am Comments	2318	
301 KAR 002:245	49 Ky.R. 1545		As Amended	50 Ky.R. 40	
As Amended	1919	6-8-2023	505 KAR 001:140		
301 KAR 002:300			Amended	49 Ky.R. 1670	
Amended	49 Ky.R. 1656		Am Comments	2320	
As Amended	2090	6-8-2023	As Amended	50 Ky.R. 40	
301 KAR 003:120			505 KAR 001:180		
Amended	49 Ky.R. 1516		Amended	49 Ky.R. 2373	
As Amended	1920	6-8-2023	505 KAR 001:185	49 Ky.R. 2429	
301 KAR 004:110			505 KAR 001:200	49 Ky.R. 2432	
Amended	49 Ky.R. 1822		505 KAR 001:210	49 Ky.R. 2434	
As Amended	2284	6-8-2023	505 KAR 001:220	49 Ky.R. 2436	
301 KAR 005:001			505 KAR 001:230	49 Ky.R. 2438	
Amended	49 Ky.R. 1659	6-8-2023	505 KAR 001:240	50 Ky.R. 240	
301 KAR 005:010			505 KAR 001:250	50 Ky.R. 241	
Amended	49 Ky.R. 1661		505 KAR 001:260	50 Ky.R. 243	
As Amended	2092	6-8-2023	505 KAR 001:270	50 Ky.R. 245	
301 KAR 005:020			505 KAR 001:280	50 Ky.R. 248	
Amended	49 Ky.R. 1662		505 KAR 001:290	50 Ky.R. 250	
As Amended	2093	6-8-2023	505 KAR 001:300	50 Ky.R. 251	
301 KAR 005:022			505 KAR 001:310	50 Ky.R. 253	
Amended	49 Ky.R. 1664		505 KAR 001:320	50 Ky.R. 256	
As Amended	2094	6-8-2023	505 KAR 001:330	50 Ky.R. 257	
301 KAR 006:001			505 KAR 001:340	50 Ky.R. 259	
Amended	49 Ky.R. 2128		505 KAR 001:350	50 Ky.R. 261	
301 KAR 006:020			505 KAR 001:360	50 Ky.R. 263	
Amended	49 Ky.R. 2130		505 KAR 001:370	50 Ky.R. 265	
301 KAR 011:020	49 Ky.R. 2427		505 KAR 001:380	50 Ky.R. 268	
302 KAR 016:010			505 KAR 001:390	50 Ky.R. 270	
Amended	50 Ky.R. 151		505 KAR 001:400	50 Ky.R. 272	
302 KAR 016:020			505 KAR 001:410	50 Ky.R. 276	
Amended	50 Ky.R. 152		505 KAR 001:420	50 Ky.R. 278	
302 KAR 016:030			601 KAR 014:050		
Amended	50 Ky.R. 154		Amended	49 Ky.R. 1826	
302 KAR 016:071	50 Ky.R. 235		701 KAR 008:010		
302 KAR 016:072	50 Ky.R. 236		Amended	49 Ky.R. 1153	
302 KAR 016:111			As Amended	1924	
Amended	50 Ky.R. 156		701 KAR 008:020		
302 KAR 022:150			Amended	49 Ky.R. 1158	
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SYMBOL KEY:

- * Statement of Consideration not filed by deadline
- ** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
- *** Withdrawn before being printed in Register
- IJC Interim Joint Committee
- (r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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CERTIFICATION LETTER SUMMARIES

The certification process is established in KRS 13A.3104. If the certification letter states the regulation shall be amended, the administrative body shall file an amendment to the regulation within 18 months of the date the certification letter was filed. If the certification letter states that the regulation shall remain in effect without amendment, the last effective date of the regulation is changed to the date the regulations compiler received the letter.

* KRS 13A.010(6) - "Effective" or "eff." means that an administrative regulation has completed the legislative review process established by KRS 13A.290, 13A.330, and 13A.331.

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806 KAR 018:020	06-13-2023	Remain in Effect without Amendment
902 KAR 100:080	06-12-2023	Remain in Effect without Amendment
902 KAR 100:085	06-12-2023	Remain in Effect without Amendment
922 KAR 002:020	06-19-2023	To be amended, filing deadline 12-19-2024

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The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments made during the 50th 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. To view regulations on the Legislative Research Commission Web site, go to <https://apps.legislature.ky.gov/law/kar/titles.htm>.

‡ - A technical change was made to this administrative regulation during the promulgation process, pursuant to KRS 13A.320(1)(e).

† - A nonsubstantive change was made by the Compiler pursuant to KRS 13A.040(9).

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